

September 8, 2017

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2700, 2300 Yonge Street
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

**Re: Union Gas Limited
Kimpe Storage Compensation
Board File #EB-2016-0030**

This is Union Gas Limited's submission in the above-noted proceeding. The submission is made in response to Mr. Kimpe's submission of August 21, 2017 and in accordance with the scope set out in the Board's Procedural Orders No. 1 and 2. It should be read in conjunction with Union's pre-filed evidence and answers to interrogatories.

Overview

For the reasons that follow, Union respectfully requests that the Board make an order or orders:

- fixing Mr. Kimpe's compensation for the period 2009 to 2018 in accordance with the amending agreements accepted by over 90% of Union's storage landowners (and which Mr. Kimpe has already been paid for the period 2009 to 2017);¹ and
- denying Mr. Kimpe's application for any additional compensation beyond that he already received for the period between 1974 and 2008.

The Board has repeatedly rejected Mr. Kimpe's many attempts to receive preferential compensation over and above the compensation received by other storage landowners. In this proceeding, Mr. Kimpe's latest request for preferential treatment, Mr. Kimpe asks the Board for additional compensation based on storage reef acreage (up to 2017) and on a royalty basis (starting in 2018). There is no basis on which the Board should vary the acreage-based compensation methodology it has adopted and approved since 1982, or on which it should award Mr. Kimpe different compensation than that paid to the other landowners.

¹ The current payments are \$142.36 for inside acres and \$41.75 for outside acres. This payment is increased annually by the CPI or 2%, whichever is greater.

No basis to change the already-approved landowner compensation methodology

Union's current practice is to compensate all landowners who have property inside the Bentpath Pool Designated Storage Area (the "DSA") annually at the same rate.² As Union understands Mr. Kimpe's request, he is proposing that he should receive greater compensation than all other landowners because he does not have a signed Gas Storage Lease. Mr. Kimpe's rationale appears to be that only landowners who have the actual storage reef under their property be compensated.³ In his most recent correspondence, he requests yet another form of compensation – a royalty from 2018 forward rather than per-acre compensation.⁴ Consistently with the Board's direction, Union compensates all landowners at the same rate, whether or not they have entered into a Gas Storage Lease.

There is no basis on which the Board should change the methodology by which compensation for landowners in the DSA is calculated.

First, the Board has already determined that just and reasonable compensation for landowners should be calculated on a per-acre basis. The Board addressed the issue of compensation for landowners in the DSA in its Reasons for Decision in E.B.O. 64(1) & (2) (the "Bentpath Decision").⁵ Mr. Kimpe was an applicant and witness in the proceeding leading to the Bentpath Decision.⁶ In that decision, the Board selected an acreage-based compensation methodology after reviewing several other possible methodologies, many of them proposed by Mr. Kimpe.⁷ The Board also fixed a compensation level for residual gas.⁸

The Bentpath Decision cited extensively from the Board's Crozier report released in 1964, which recommended an acreage-based methodology.⁹ The Board again approved this methodology in the RP-2000-0005 proceeding.¹⁰ Following these decisions, Union successfully negotiated two agreements with landowners in the DSA based on this methodology (covering the periods 2009 to 2013 and 2014 to 2018).¹¹ The Board further confirmed its acceptance of this methodology in a number of subsequent decisions, including in rejecting two attempts by Mr. Kimpe to have the Bentpath Decision varied.¹² There has been no change in circumstances since the Crozier report, the Board's decisions on this matter and the negotiations with affected landowners that would warrant a deviation from Union's standard practice and industry standard practice in compensating landowners for storage rights.¹³

² Union's pre-filed evidence, para. 8.

³ Union's pre-filed evidence, para. 9.

⁴ Letter from Mr. Kimpe to the Board dated August 21, 2017.

⁵ Board's Reasons for Decision in E.B.O. 64(1) & (2) ("Bentpath Decision"), Union's pre-filed evidence, Sched. 3.

⁶ Bentpath Decision, pp. 5-16.

⁷ Union's pre-filed evidence, paras. 13-18; Bentpath Decision, pp. 106-107.

⁸ Union's pre-filed evidence, para. 17; Bentpath Decision, p. 110.

⁹ *Gas Storage Report to the Lieutenant Governor in Council by the Ontario Energy Board* dated May 4, 1964, OC 1354/62, Union's pre-filed evidence, Sched. 6.

¹⁰ Board's Decision and Order in RP-2000-0005, Union's pre-filed evidence, Sched. 7; Bentpath Decision, pp. 100-103.

¹¹ Union's pre-filed evidence, para. 35.

¹² Union's pre-filed evidence, para. 19; Board's Decision in EB-2012-0314, Union's pre-filed evidence, Sched. 4; Board's Decision in EB-2013-0073, Union's pre-filed evidence, Sched. 5.

¹³ Union's pre-filed evidence, para. 28.

Second, in any event, the compensation methodology that Mr. Kimpe proposed in his initial application is not appropriate.¹⁴ Union has a long-standing practice of compensating all landowners within a designated storage area at the same rate per acre.¹⁵ If Mr. Kimpe's proposal were accepted, landowners within the DSA who do not have storage reef under their property would no longer receive compensation.¹⁶ This would mean that nine landowners who currently receive compensation would no longer receive any compensation.¹⁷ Mr. Kimpe's proportionate share of the total compensation for the DSA would increase from 6.6% to 13.9%.¹⁸ If implemented, this proposal would be contrary to the right – set out in section 38(2) of the *Ontario Energy Board Act, 1998* – of the other storage landowners to receive just and equitable compensation. It would also result in a departure from Union's long-standing practice of offering all storage landowners the same level of compensation, regardless of whether they have entered into a Gas Storage Lease with Union. The Board recognized the importance of providing the same level of compensation to all storage landowners in the Bentpath Decision:

[T]he Board believes that it would be appropriate if Union, in the interests of fairness, equity and good public relations, offered the same compensation to all other landowners in the Bentpath Pool.¹⁹

Mr. Kimpe's proposal would be directly contrary to this direction from the Board, and therefore should be rejected.

Third, the royalty-based methodology Mr. Kimpe proposed in his submission is equally inappropriate. Union pays storage landowners for the right to use the storage space located under their properties. The storage landowners do not own or have any rights to the gas resource, nor have they contributed in any way to the development or maintenance of the storage pools.

It is also unclear how a royalty could be calculated. Based on the way Union markets storage, it is not possible to calculate a pool-specific royalty. Union does not specifically identify or market specific storage capacity in an individual pool to specific customers, but rather storage space is marketed on a system-wide integrated basis.

Fourth, it would be inappropriate for compensation to be varied in the context of this proceeding, brought by a single landowner. Any proposed adjustments to compensation would be more appropriately raised by the landowners as a group in the context of the negotiation of a future agreement, or in any proceeding before the Board resulting from those negotiations.

The appropriate time period covered by Mr. Kimpe's application

Mr. Kimpe has received compensation on the same basis as all other landowners in the DSA since 1974. Although he has not signed the amending agreements negotiated with the other landowners (and

¹⁴ Union's pre-filed evidence, paras. 21-28.

¹⁵ Union's pre-filed evidence, para. 21.

¹⁶ Union's pre-filed evidence, paras. 9-11.

¹⁷ Union's pre-filed evidence, para. 11.

¹⁸ Union's pre-filed evidence, para. 11.

¹⁹ Bentpath Decision, p. 108.

accepted by over 90% of them), he has received compensation as if he had signed them.²⁰

There is no basis on which the Board should vary the compensation that Mr. Kimpe has already received. For the period 2009 to 2017, Mr. Kimpe has received inside acre compensation of \$56,876.50 and outside acre compensation of \$8,543.50. These payments were made applying the acre-based methodology that was recommended in the Board's Crozier report, approved by the Board in the Bentpath Decision, subsequently confirmed by the Board, and approved by the other landowners in the DSA.²¹ As set out above, the Board should not deviate from this methodology.

With respect to the period before 2009, the Board has already determined that it would not examine Mr. Kimpe's claim for compensation in respect of the time periods from 1974 to 1990 and from 2000 to 2008.²² The Board also should not examine Mr. Kimpe's claim for compensation in respect of the years 1991 to 1999. As set out in Union's pre-filed evidence, Mr. Kimpe is bound by the settlement agreement approved in RP-2000-0005. He was a represented applicant in that proceeding, and is therefore precluded from raising any claims for compensation for the period up to and including December 1999.²³ In any event, he received compensation for that period at the same rate as all other landowners, and there is no basis to vary that compensation.

With respect to the years 2009 to the present, Union requests an order or orders fixing Mr. Kimpe's compensation for the period 2009 to 2018 in accordance with the amending agreements.

If you require any additional information or have any questions in regard to these submissions, please contact the undersigned.

Sincerely,

[original signed by]

William T. Wachsmuth,
Senior Administrator, Regulatory Projects

MS/lt

cc: Zora Cronojacki
Nancy Marconi
Ritchie Murray
Anthony Rizzetto

²⁰ Union's pre-filed evidence, paras. 18, 34-37, Sched. 8.

²¹ Union's pre-filed evidence, Sched. 8.

²² Procedural Order No. 1.

²³ Union's pre-filed evidence, paras. 31-33.