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Reference: 09483/03651

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319, 26th Floor  
2300 Yonge Street  
Toronto, Ontario  
M4P 1E4

**Re: Union's Application for Designation of the Heritage Gas Storage Pool,  
EB-2008-0405 - Union's Reply Argument**

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Dear Ms. Walli:

The following is Union's reply argument to the submissions of Board Staff pursuant to Procedural Order No. 1.

Union has no objection to the three project specific conditions (3.1 to 3.3) that were proposed by Board Staff.

Union submits, however, that Staff's proposed conditions 1.2 and 1.9 for Authorization to Inject, Store and Remove Gas (Appendix A to Staff's submissions) are not appropriate in this case.

**Condition 1.2**

Union requests that condition 1.2 be entirely deleted. That condition requires Union to obtain all necessary storage rights within the Heritage Designated Storage Area (DSA) prior to commencement of operations. Union submits that this condition is unnecessary because if the Board designates the area as a DSA then under s. 38(1) of *Ontario Energy Board Act, 1998* (the Act) Union would automatically have all the necessary storage rights to operate the Pool:

38. (1) The Board by order may authorize a person to inject gas into, store gas in and remove gas from a designated gas storage area, and to enter into and upon the land in the area and use the land for that purpose.

The Board's decision in the Century Pools Storage Development – Phase I proceeding (E.B.L.O. 268) is an example of a case where the Board designated an area as a DSA and allowed the pool to be operated even though a number of landowners refused to sign a storage lease with Union (see pages 22-23 of the decision). Copies of the relevant pages from that Decision with Reasons is attached.

In this case, Union has a storage lease in place with all affected landowners except for the Ministry of Transportation, and Union does not expect any difficulty in obtaining that lease.

However, in the unlikely event that a landowner does not enter into a storage lease with Union prior to commencement of operation, such a landowner would be fully protected because such landowner would have a statutory right to compensation under ss. 38(2) and (3) of the Act.

### **Condition 1.9**

Proposed condition 1.9 requires Union to obtain insurance *“in the amount that is determined to be adequate by an independent party with expertise in adequacy of insurance coverage for environmental and other risks”*. Union has no objections to obtaining insurance; however, since there were no questions or concerns identified, Union submits there should be no requirement for Union to obtain an assessment of the appropriate amount of coverage from an independent third party. This condition has not been imposed on any previous Union storage projects.

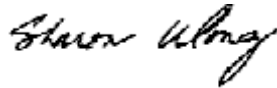
Union has been safely operating storage in Ontario since 1942, and Union currently owns and operate 21 storage pools. If approved, the Heritage Pool will be Union's 22<sup>nd</sup> storage pool, and its smallest (Technical Conference Transcript, p. 33). Union's insurance coverage for the Heritage Pool project will be incorporated into Union's existing insurance policies, and Union does not intend to have a separate policy that would cover only the Heritage Pool. Union's insurance group continuously reviews the coverage required for Union's operations and adjusts the coverage as required.

Union as a long standing storage operator has developed and modified its insurance coverage to ensure that adequate coverage is available to address liability and environmental concerns. Union submits that based on its experience it has a better understanding of what insurance levels are required for the construction and operation of a Storage Pool than an independent third party.

Union therefore requests that proposed condition 1.9 be amended to read as follows:

- 1.9. After the date on which the OEB grants an order pursuant to Section 38(1) of the OEB Act and before commencement of drilling operations or pipeline construction to use the DSA for storage, and thereafter while the DSA or any part thereof is being used for storage operations, Union shall obtain and maintain in full force and effect insurance coverage for its operations at the Heritage Pool including, but not limited to, liability and pollution coverage. Union shall notify the Board once insurance coverage has been obtained for the Heritage Pool in accordance with this condition.

Yours truly,



Sharon Wong

c: All Intervenors

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# **ONTARIO ENERGY BOARD**

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**E.B.L.O. 268  
E.B.O. 206, 207, 208  
E.B.R.M. 111**

IN THE MATTER OF THE  
ONTARIO ENERGY BOARD ACT

AND

IN THE MATTER OF APPLICATIONS BY

**UNION GAS LIMITED**

FOR

**LEAVE TO CONSTRUCT, DESIGNATION OF GAS  
STORAGE AREAS, AUTHORIZATION TO INJECT,  
DRILLING LICENCES AND APPROVAL OF GAS  
STORAGE CONTRACTS  
CENTURY POOLS DEVELOPMENT, PHASE I**

**DECISION WITH REASONS**

**1999 MARCH 23**

storage area comprises 250 hectares (625 acres) and includes a minimum buffer of 272 metres between the farthest extent of the porosity and the proposed boundary. The proposed designated storage area is shown on Figure 2.

3.2.16 Union included the additional tracts including the corner tracts, as a buffer area, in order to prevent an operator from penetrating the Pool from the edge of the boundary of the designated gas storage area. As a consequence of the addition of these areas into the proposed designated storage area, Union served the affected landowners notice that their properties were now included by letter dated December 8, 1998. Union stated that the revised boundaries had been discussed with MNR and were acceptable to MNR.

3.2.17 The Board finds the boundaries as outlined in the updated request as providing adequate protection of the storage pool and is satisfied that Union has sufficient title to storage rights or agreements to use the storage rights to allow for designation of the Pool and to proceed with the development of the Pool.

3.2.18 The Board finds that it is in the public interest to have the Guelph formation reservoir known as the Booth Creek Pool designated as a gas storage area. The Board therefore recommends to the Lieutenant Governor that a Regulation be approved designating the Booth Creek Pool as a storage area. The metes and bounds description is provided in Appendix C.

Authorization to Inject

3.2.19 Union holds the P&NG leases on the lands to be included within the proposed designated area except for the property of Leonard and Debora McMurphy and the property of William and Evelyn Thomas. The lands in question total 75 acres within the area to be designated.

3.2.20 The Board is mindful that the inclusion of these lands within the boundary of the designated area limits the development of other oil and gas resources that might exist, due to the necessity of ensuring the integrity of the Guelph reservoir. Any applications for well drilling licences made under the Oil, Gas and Salt Resources Act must be referred to the Board. Before reporting favorably to the Minister of

Natural Resources, the Board would have to be satisfied that such drilling would not compromise the integrity of the Pool.

3.2.21 There is no P&NG lease on the McMurphy property. However, mindful of the impact of designation on their P&NG rights, the Board directs that the McMurphys be offered the same compensation as the other lessors. The same is directed with regard to the holder of the P&NG rights on the Thomas property. This direction is without prejudice to any application that might be brought to the Board under section 21(3) of the Act for a determination of compensation.

3.2.22 Union holds gas storage leases for the lands to be included within the proposed designated area, except for the properties of Leonard and Debora McMurphy, William and Evelyn Thomas and the Higgs family. The lands in question total 125 acres within the area to be designated.

3.2.23 The Board recognizes that the inclusion of these 125 acres effectively expropriates the gas storage rights from the property owners to Union. The Board finds that it is in the public interest to expropriate these rights to ensure the development and use of the Pool on behalf of the users of natural gas within Ontario.

3.2.24 The owners of the storage rights must be compensated for the loss of their storage rights on the 125 acres. Should the Booth Creek Pool be designated as a gas storage area, the Board will require that the owners of the storage rights be offered the same amount of compensation that has been offered for the gas storage rights and accepted by the other lessors. This direction is without prejudice to any application that might be brought to the Board under section 21(3) of the Act for a determination of compensation.

3.2.25 The Board finds that it is in the public interest to grant Union authorization to inject, store gas and withdraw gas from the Booth Creek Pool. The Board will accordingly issue an order granting such authority to Union, once an Ontario Regulation has been filed designating the Booth Creek Pool as a gas storage area, subject the conditions of approval identified in Appendix D.

Conditions of Approval

Authorization to Inject, Store and Remove Gas - Booth Creek Pool - E.B.O. 207

1. Union shall provide the Board with a report identifying and explaining all material gas losses associated with the operation of the Booth Creek Pool within six months of such losses being identified.
2. Union shall not operate the Booth Creek Pool above a pressure representing a pressure gradient of 0.7 psi per ft. depth (15.9 kPa/m.) without leave of the Board. Union shall support any leave application with an engineering, geological and economic study showing that greater pressures are safe and in the public interest.
3. Union shall make the lessors an offer of fair, just and equitable compensation in respect of the gas storage rights and petroleum natural gas leases, prior to the injection of natural gas into the Pool.
4. Union shall make to the landowners and/or tenants an offer of fair, just and equitable compensation for any damage resulting from the authority hereby being granted by the Board.
5. The authority granted under this Order to Union is not transferrable to another party, without leave of the Board.
6. Should Union fail to inject sufficient gas to achieve a reservoir pressure of 700 psig. before December 31, 2000, the Company shall be required to apply to the Board for an extension of the authority granted under the Board's Order and will be required to submit evidence to show why such an extension should be granted.
7. The Board's designated representative for the purpose of these Conditions of Approval shall be the Board's Regulatory Officer responsible for the application, or in his/her absence the Manager, Facilities