

BOARD STAFF SUBMISSION

TRIBUTE RESOURCES AND BAYFIELD RESOURCES INC.

APPLICATIONS TO DEVELOP HURON BAYFIELD STORAGE PROJECT

EB-2009-0338

EB-2009-0339

EB-2009-0340

The Applications

On September 22, 2009¹ Tribute Resources Inc. (“Tribute”) and Bayfield Resources Inc., on behalf of Huron Bayfield Limited Partnership and Bayfield Pipeline Corp. (the “Applicants”) filed applications with the Ontario Energy Board, (the “Board”) under sections 36.1(1), 38(1), 38(3), 40(1) and 90(1) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (the “Act”). The application relates to the development of two storage pools in Huron County and the construction of about 70 km of dedicated pipeline in the County of Huron and in the County of Middlesex, Ontario. The pipeline is necessary to connect the pools in Huron County to Union Gas Limited’s integrated system. The applications were assigned file numbers as follows:

- EB-2009-0338 - Application under section 90(1) of the Act for Leave to Construct by Bayfield Pipeline Corp.
- EB-2009-0339 - Application to develop the Bayfield storage pool by Tribute Resources Inc. and Bayfield Resources Inc. on behalf of Huron Bayfield Limited Partnership. In this application the Applicants have requested the following:
 - designation of the proposed Bayfield gas storage pool under s. 36.1 of the Act;
 - authorization to inject, store and withdraw gas under s. 38(1) of the Act; and
 - a favourable report to the Minister of Natural Resources regarding licences to drill 4 wells within the designated storage area under s. 40 of the Act.

¹ The applications were subsequently amended on December 15, 2009.

- EB-2009-0340 - Application to develop Stanley 4-7-XI storage pool (the “Stanley Pool”) by Tribute Resources Inc. and Bayfield Resources Inc. on behalf of Huron Bayfield Limited Partnership. In this application the Applicants have requested the following:
 - designation of the proposed Stanley Pool under s. 36.1 of the Act;
 - authorization to inject, store and withdraw gas under s. 38(1) of the Act;
 - a favourable report to the Minister of Natural Resources regarding licences to drill 4 wells within the designated storage area under s. 40 of the Act; and
 - an order determining just and equitable compensation payable to any owner of any gas or oil rights or the right to store gas within Stanley Pool under section 38(3) of the Act.

The Board issued a Notice of Application and Hearing dated January 13, 2010. The Notice was published and served as directed. The Board granted intervenor status to the following: McKinley Farms Ltd. (“McKinley”); 2195002 Ontario Inc. (“2195002 Inc.”); Zurich Landowners Association; Union Gas Limited; Municipality of Bluewater; the Huron County Federation of Agriculture; and Stanley Bayfield Landowners Group.

Court Proceedings

Both Tribute and McKinley applied to the Superior Court of Justice pursuant to Rule 14.05 of the *Rules of Civil Procedure*, seeking a declaration as to the validity of two separate contracts entered into between them or their predecessors with respect to ownership of the land under which the Stanley Pool is located. Mr. Justice Little, in a decision dated June 29, 2009, found that both contracts relating to the land in question: an Oil and Gas Lease as amended by a Unit Operation Agreement, and a Gas Storage Lease Agreement on the McKinley land over the Stanley Pool, had been void and vacated. Tribute appealed this decision and on January 26, 2010 the Ontario Court of Appeal heard Tribute’s appeal with respect to the validity of the Gas Storage Lease. The Court reserved its decision.

By way of Procedural Order No. 1, dated February 9, 2010 the Board directed the parties to file submissions with respect to whether or not the proceedings before the Board should be stayed pending the release of the decision of the Court of Appeal.

Submission

Board staff notes that in response to Procedural Order No. 1, the Applicants have taken the following position with respect to the question of a stay:

“The Applicants accept deferring the entire proceedings, including the Applications pertaining to the Bayfield Storage Pool and the Bayfield Pipeline Corp. until the Ontario Court of Appeal has issued a decision in the Stanley case, after which the Ontario Energy Board and all parties can review and respond to that decision.”

In light of the submission made by the Applicants, Board staff supports having these proceedings stayed in their entirety until such time as the Court of Appeal has issued a decision. In Board staff's view, a stay is not required for all the applications before the Board, as some of the applications do not turn on the issues being considered by the Court. However, it would seem impractical in this case for the Board to hear certain matters, such as the designation applications, separately, and as such a stay is appropriate in these circumstances.

All of which is respectfully submitted