



EB-2009-0338
EB-2009-0339
EB-2009-0340

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B; and in particular sections 36.1 (1), 38(1), 38(3), 40(1), 90(1).

PROCEDURAL ORDER No. 2

Tribute Resources Inc. and Bayfield Resources Inc., on behalf of Huron Bayfield Limited Partnership and Bayfield Pipeline Corp. (the "Applicants") have filed applications with the Ontario Energy Board, (the "Board") dated September 22, 2009. These applications were subsequently amended on December 15, 2009. The applications were filed 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") and would, if granted, allow the Applicants to develop natural gas storage pools located in the geographic area of the County of Huron and in the County of Middlesex Ontario (the "Project").

The Board issued a Notice of Application and Hearing dated January 13, 2010. The notice was served and published as directed by the Board. The registered intervenors in the proceeding are: McKinley Farms Ltd. ("McKinley"); 2195002 Ontario Inc. Zurich Landowners Association ("Zurich Landowners"); Union Gas Limited ("Union"); Municipality of Bluewater ("Bluewater"); the Huron County Federation of Agriculture ("HCFA"); and Stanley Bayfield Landowners Group ("SBLG").

The Applications

The Applicants have applied for the following:

- 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. 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.
- EB-2009-0340 - Application to develop the Stanley 4-7-XI storage pool (the “Stanley Pool”) by Tribute Resources Inc. and Bayfield Resources Inc. on behalf of Huron Bayfield Limited Partnership. 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.

Concurrent Proceedings – Superior Court of Justice

Both Tribute and McKinley applied to the Superior Court of Justice pursuant to Rule 14.05 of the Ontario *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 the 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 (“Court of Appeal”) heard Tribute’s appeal with respect to the validity of the Gas Storage Lease. The Court reserved its decision.

As a result, the Board decided that it was necessary to consider the question of whether the Board’s proceeding should be stayed until the Court of Appeal decision on Tribute’s appeal is rendered. To assist with this consideration the Board, by way of Procedural Order No. 1, dated February 9, 2010, 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.

Submissions

The Board received submissions on the question of whether or not the proceedings should be stayed from the Applicants, Board staff, the HCFA and McKinley and 2195002 Ontario Inc.

The Applicants filed submissions on February 12, 2010 and 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 written submissions, dated February 18, 2010, Board staff supported having the proceedings stayed in their entirety until such time as the Court of Appeal has issued a decision. Board Staff noted that, a stay would not be required for all the applications before the Board, as some of the applications do not turn on the issue currently being considered by the Court. However, Board staff submitted that 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 would be appropriate in these circumstances.

On February 22, 2010, the HCFA filed a submission supporting “postponing the proceedings, until the Ontario Court of Appeal has issued a decision in the Stanley case”.

Mr. Jed Chinneck, Legal Counsel for McKinley and 2195002 Ontario Inc., filed a submission on February 22, 2010. Mr. Chinneck requested that the Board stay certain proceedings related to the Stanley Pool application (EB-2009-0340) as follows:

- 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.

and to proceed with the following:

- application for leave to construct the proposed transmission pipeline (EB-2009 0338);
- all sections of application to develop the proposed Bayfield Pool (EB-2009-0339); and
- designation section of application to develop the proposed Stanley Pool (EB-2009-0340).

McKinley and 2195002 Ontario Inc. submitted that the Board's review of the above applications do not turn on issues that are subject to the Court of Appeal Decision and should therefore be processed in the ordinary course.

No other submissions were received.

Board Findings

The Board reviewed the submissions and decided to stay its review of all of the applications. The Board view is that the outcome of the Court of Appeal Decision directly affects only Stanley Pool applications under sections 38(1), 40 and 38(3). However, The Board notes that the pre-filed evidence for applications under all 3 file numbers is interrelated and that the review of all of the applications in a single proceeding is more efficient and practical.

At this time the Board considers it necessary to make provision for the following procedural matters. Please be aware that this procedural order may be amended, and further procedural orders may be issued from time to time.

THE BOARD ORDERS THAT:

1. The proceeding for the applications under file numbers EB-2009-0338/0339/0340 be stayed until the Court of Appeal decision on the storage rights ownership in Stanley 4-7-XI is rendered.
2. The Applicants file with the Board, and all the intervenors, a copy of the Court of Appeal Decision no later than 15 days from the date it would be rendered.

All filings to the Board must quote file numbers EB-2009-0338/0339/0340 be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available you may email your document to the BoardSec@oeb.gov.on.ca. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file seven paper copies. If you have submitted through the Board's web portal an e-mail is not required."

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

DATED at Toronto, March 12, 2010

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary