



**EB-2007-0837**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B;

**AND IN THE MATTER OF** an application by Union Gas Limited for an Order pursuant to Section 43(2)(a) of the *Ontario Energy Board Act, 1998*, granting leave to acquire voting securities of the Tipperary Gas Corp.

**BEFORE:** Cynthia Chaplin  
Presiding Member

Bill Rupert  
Member

### **DECISION AND ORDER**

Union Gas Limited ( "Union") filed an application dated October 26, 2007 with the Ontario Energy Board (the "Board") under section 43(2)(a) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (the "Act") for an order granting Union leave to purchase 75% of the voting securities of Tipperary Gas Corp. ("Tipperary GP"). The Board assigned file number EB-2007-0837 to the application.

For the reasons set out below, the Board finds the proposed transaction is in the public interest and grants Union leave to acquire voting securities of Tipperary GP pursuant to section 43(2)(a) of the Act.

**The Proposed Transaction**

Tipperary GP is the general partner of Huron Tipperary Limited Partnership I ("Tipperary LP"), which owns the storage rights to land and facilities referred to as the Tipperary North and South Storage Pools located in the Township of Goderich, Municipality of Central Huron (the "Storage Pools"). Tipperary GP is a storage company as defined in the Act and currently is wholly-owned by Tribute Resources Inc. ("Tribute").

Under the proposed transaction Union would:

- Purchase 75% of the shares of Tipperary GP from Tribute;
- Subscribe for a 75% interest in Tipperary LP;
- Operate the Storage Pools by contractual agreement with Tipperary LP once the Storage Pools are developed; and,
- Lease the space in the developed Storage Pools from Tipperary LP.

Tribute currently owns 100% of the limited partnership units of Tipperary LP and 100% of shares of Tipperary GP. Union stated that Tipperary GP will remain the sole general partner after the transaction.

Union stated that Tipperary GP is authorized by Board Orders to operate the Storage Pools and holds Well Licences issued by the Ministry of Natural Resource to operate the Storage Pools. Union indicated that Tipperary GP will continue to be subject to the Board Orders and licence conditions after the transaction is completed.

**The Proceeding**

The Board Issued the Notice of Application and Written Hearing on November 13, 2007. Union served the Notice as directed by the Board. No party requested an oral hearing. The Board proceeded by way of written hearing.

The following parties filed written submissions by November 29, 2007: the Industrial Gas Users Association (“IGUA”); the Consumers Council of Canada (“CCC”); the Tipperary Storage Landowners Association (“TSLA”); Mr. Lenus Yeo; and Mr. Goff Brand, a landowner. Union filed its written reply submission on December 10, 2007.

### **Scope of the Board’s Public Interest Review**

Section 43(2)(a) of the Act reads:

#### ***Acquisition of share control***

*(2) No person, without first obtaining an order from the Board granting leave, shall,*

*(a) acquire such number of voting securities of a gas transmitter, gas distributor or storage company that together with voting securities already held by such person and one or more affiliates or associates of that person, will in the aggregate exceed 20 per cent of the voting securities of a gas transmitter, gas distributor or storage company;*

The scope of the Board’s public interest review of this application was defined by objectives 4 and 5.1 in section 2 of the Act. These objectives set out the responsibilities of the Board in relation to gas storage:

*4. To facilitate rational development and safe operation of gas storage.*

*5.1 To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas.*

The Board invited comments from interested parties on the following questions within the scope of Board’s review:

1. What is the effect of the proposed transaction on rational development and safe operation of storage?

2. Does the proposed transaction facilitate the maintenance of a financially viable industry for the transmission, distribution and storage of gas?

### **Board Findings**

CCC took the position that the proposal does not meet either objective. This is based on its assertion that Union is the dominant storage provider. Similar concerns were raised by Mr. Yeo in his letter. IGUA also took the view that the proposal demonstrates Union's market dominance.

The Board disagrees with these views. The Board has previously found that Union does not have a dominant position in the marketplace. In its Natural Gas Electricity Interface Review, the Board made two findings relevant to this issue: (1) "...the geographic market includes Ontario, Michigan, northern Illinois, northern Indiana, and the National Fuel Gas territory in western New York and Pennsylvania; and (2) "...neither Union nor Enbridge have market power in the storage market. The Board finds that the storage market is workably competitive."<sup>1</sup>

Given Union's market position, and the small size of the Tipperary Storage Pools, the current proposal does not have an adverse impact on storage competition.

Further, it is consistent with the objectives of rational storage development and a financially viable industry that projects be completed, and the Board finds that this proposal, through the additional infusion of capital, facilitates the completion of the Tipperary project.

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<sup>1</sup> *Natural Gas Electricity Interface Review*, Decision and Order, EB-2005-0551, (November 7, 2006) at p.38.

CCC commented that the Board must not overlook its obligation to protect the interests of consumers with respect to prices. The Board finds that it is in consumers' interest that storage projects be developed. This proposal facilitates the development of storage.

TSLA did not oppose the application, but raised concerns about the commitments made by Tipperary GP and the conditions of approval contained in previous Board orders concerning the development of the Storage Pools.

The Board confirms that all the earlier commitments and conditions remain the responsibility of Tipperary Gas Corp., as the holder of the relevant licenses and Board Orders, and that all the conditions attached to Board's Decision with Reasons EB-2006-0018/EB-2006-0159/EB-2006-0279 are to be implemented by Tipperary Gas Corp.

### **Costs**

The Board grants eligibility for a cost award to each party that provided written submissions, regardless if the party asked for the status. The Board notes that Union did not object to cost award eligibility for any of the parties in the proceeding.

### **Orders Granted**

For the reasons indicated, the Board finds Union's proposed purchase of 75% of Tipperary Gas Corp proposed is in the public interest and grants to Union an order under section 43(2)(a) of the Act.

**THE BOARD ORDERS THAT:**

1. Union Gas Limited is granted leave, pursuant to subsection 43(2)(a) of the Act, to acquire 75% voting securities of the Tipperary Gas Corp.
2. All the parties that applied for eligibility for a cost award and those who filed written submissions are granted eligibility for a cost award.
3. Eligible parties who seek an award of costs in this proceeding shall file their cost submissions in accordance with the *Practice Direction on Cost Awards* and shall submit the claim to the Board Secretary within 15 days of the date of this Decision and Order. A copy of the claim shall be sent to Union Gas Limited. Union Gas Limited may make submissions regarding the cost claims within 30 days of the Decision and Order and the affected party may reply within 45 days of the Decision and Order. A decision and order regarding cost awards will be issued at a later date. Upon receipt of the Board's cost award decision and order, Union Gas Limited shall pay any awarded costs with dispatch.
4. Union Gas Limited shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

**DATED** at Toronto December 24, 2007

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary