

**mccarthy
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April 14, 2011

Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Suite 2700
Toronto ON M4P 1E4

Attention: Ms Kirsten Walli
Board Secretary

Dear Ms. Walli:

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

AND IN THE MATTER OF an application by Union Gas Limited for an Order designating the area known as the Jacob Pool, in the Municipality of Chatham-Kent, as a gas storage area;

AND IN THE MATTER OF an application by Union Gas Limited for authority to inject gas into, store gas in and remove gas from the areas designated as the Jacob Pool and to enter into and upon the lands in the said areas and use the said lands for such purposes;

AND IN THE MATTER OF an application by Union Gas Limited to the Ministry of Natural Resources for a license to drill wells in the said areas;

AND IN THE MATTER OF an application by Union Gas Limited for an Order granting leave to construct natural gas pipelines in the Municipality of Chatham-Kent.

Board File: EB-2011-0013, EB-2011-0014 and EB-2011-0015

Attached please find a Notice of Motion which is being filed on behalf of Union Gas Limited for the above-noted matters.

Sincerely,


George Vegh

GV:MAB
Att
c: Intervenors on record

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AND IN THE MATTER OF an application by Union Gas Limited for an Order designating the area known as the Jacob Pool, in the Municipality of Chatham-Kent, as a gas storage area;

AND IN THE MATTER OF an application by Union Gas Limited for authority to inject gas into, store gas in and remove gas from the areas designated as the Jacob Pool and to enter into and upon the lands in the said areas and use the said lands for such purposes;

AND IN THE MATTER OF an application by Union Gas Limited to the Ministry of Natural Resources for a license to drill wells in the said areas;

AND IN THE MATTER OF an application by Union Gas Limited for an Order granting leave to construct natural gas pipelines in the Municipality of Chatham-Kent.

NOTICE OF MOTION

The Moving Party, Union Gas Limited ("Union") will bring a motion to the Board for an order striking the evidence filed by the Kent Federation of Agriculture ("KFA") on April 11, 2011.

Union requests that this motion be held in writing so that it may be disposed of in accordance with the schedule for these proceedings.

The Ground for this Motion is that the KFA evidence is not relevant to the issues in this proceeding.

The Factual Basis for this Motion is as follows:

1. In this Application, Union has applied for:
 - a. Designation of the proposed Jacob Gas Storage Pool (the "Jacob Pool") and authority to operate the Jacob Pool pursuant to ss. 36.1(1) of the Act and subsection 38(1) of the Act, respectively.
 - b. Leave to construct a transmission pipeline, pursuant to s. 90 of the Act.
 - c. Licences to drill three injection/withdrawal wells in the proposed Jacob Pool pursuant to s.40 of the Act.
2. By Procedural Order No. 1, dated March 29, 2011, the Board ordered that "the scope of this proceeding will be limited to the Issues List" attached to that Order.
3. Item 1.3 of the Issues List states the following Issue: "Does the applicant have the necessary leases and agreements with the directly affected landowners."
4. In accordance with that issue, Union's pre-filed evidence includes leases with all directly affected landowners. Those leases are found in Section 7, Schedule 3 of the Pre-Filed Evidence (the "Leases"). No landowner has claimed that it has not agreed to a lease.
5. The Leases all contain compensation provisions. In accordance with those provisions, landowners are entitled to rental payments and, after designation, but prior to injecting gas in the leased lands, Union shall offer an "additional acreage rental" in respect of its storage operations. If Union and the landowner cannot agree on the additional acreage rental, then a landowner may bring an application for compensation to be set by the Board pursuant to ss. 38(3) of the Act. Section 38 of the Act provides:

"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.

(2) Subject to any agreement with respect thereto, the person authorized by an order under subsection (1),

(a) shall make to the owners of any gas or oil rights or of any right to store gas in the area just and equitable compensation in respect of the gas or oil rights or the right to store gas; and

(b) shall make to the owner of any land in the area just and equitable compensation for any damage necessarily resulting from the exercise of the authority given by the order.

(3) No action or other proceeding lies in respect of compensation payable under this section and, failing agreement, the amount shall be determined by the Board.

(4) An appeal within the meaning of section 31 of the *Expropriations Act* lies from a determination of the Board under subsection (3) to the

Divisional Court, in which case that section applies and section 33 of this Act does not apply.”

6. There are three relevant points under s. 38.
7. First, the compensation rights in s. 38 are “Subject to any agreement with respect thereto”. This means that the initial issue is whether there is an agreement. This point is captured in 1.3 of the Issues List.
8. Second, the offer of compensation is made by the person who is authorized to operate the storage pool. The authorization is therefore a pre-condition to a compensation application.
9. Third, both the offers of and entitlement to compensation are with respect to landowners. Landowners are therefore the only ones authorized to bring an application under ss. 38(3).
10. There is no application for compensation currently before the Board.
11. On April 11, 2011, the KFA filed evidence which argues that the compensation under the leases in this proceeding is inadequate. The KFA is not a landowner nor does it have an agency relationship with any affected landowner under which it may represent their interests in negotiating compensation.
12. The KFA’s evidence is thus irrelevant for at least two reasons:
 - a. As indicated, the only landowner issue in this proceeding is whether Union has necessary leases and agreements in place. The uncontested evidence is that Union does have leases and agreements in place. Compensation under those agreements is not an issue in this proceeding.
 - b. *Landowner* compensation may be relevant in a future proceeding brought by a *landowner* under ss. 38(3) of the Act. In any event, the KFA is not a landowner and therefore does not have the right to commence a proceeding under ss. 38(3) of the Act.
13. Striking the KFA evidence is consistent with the Board’s past practice. In RP-1999-0047 (the “Century Pools Phase II Proceeding”), like this proceeding, Union applied for designation, injection, pipeline construction and well drilling. In the Century Pools Phase II Proceeding, the Lambton County Storage Association (“LCSA”), like the KFA in this proceeding, filed evidence on the fairness of storage compensation.
14. In the Century Pools Phase II Proceeding, the Board struck the LCSA evidence as irrelevant to the issue, of designation, injection, pipeline construction and well drilling, and held that the issue of compensation should be addressed in a ss. 38(3) proceeding.

The Following Materials will be relied upon in this Motion:

1. The Applicant’s Pre-Filed Evidence.

2. The Pre-Filed Evidence of the KFA.
3. The Board's disposition of the Union Motion on LCSA Evidence in RP-1999-0047 (Attached).

All of Which is Respectfully Submitted

Date: April 14, 2011

George Vegh

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Counsel for Union Gas Limited

To:

Ontario Energy Board

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Attention: Board Secretary

TO:

All Parties

served by the development of the Mandaumin Pool, the Bluewater Pool and the Oil City Pool.

1.2 THE HEARING

1.2.1 The Board issued its Notice of Application on October 6, 1999.

1.2.2 The Board issued Procedural Order Number 1 on November 9, 1999 setting out dates for filing interrogatories, supplementary interrogatories, responses and intervenor evidence, and the date for a technical/issues conference.

1.2.3 A Technical Conference was held at the Board's offices on December 16, 17 and 21, 1999. Representatives of the Applicant, the Lambton County Storage Association ("LCSA"), CanEnerco Limited ("CanEnerco"), Enbridge Consumer Gas, the Township of Dawn-Euphemia, and Board staff attended the Technical Conference. Mr Stan Klapak appeared on his own behalf.

1.2.4 The Board issued Procedural Order Number 2 on January 5, 2000 setting out the issues list, approved by the Board, and setting the date for the oral hearing.

1.2.5 On January 11, 2000, Union filed a motion with the Board to strike out the prefiled evidence of Dr. Walter W. Haessel and Robert J. Hunt, each filed on behalf of the LCSA.

1.2.6 On January 28, 2000 the LCSA filed an application with the Board under subsection 38(3) of the Act on behalf of all LCSA landowners within Union's existing integrated storage system for fair and equitable compensation (the "LCSA Section 38 Application").

1.2.7 On January 28, 2000, the LCSA filed a cross-motion requiring the Board: to hear and determine the issue of fair and equitable compensation under subsection 38(3) of the Act for the landowners who owned property within the proposed designated storage areas at the hearing of this proceeding; or to adjourn the compensation issue in this proceeding to be heard together or consecutively with the LCSA Section 38 Application; or to stay this proceeding, pending the disposition of the LCSA Section 38 Application.

1.2.8 The Motion and the Cross-Motion were heard at the Board's offices on February 2, 2000. The Board ordered that, for the purposes of this proceeding, the prefiled evidence of Robert J. Hunt be struck. The Board also struck the evidence of Dr. Walter Haessel, except for matters relating to the technical issues of cushion gas and the boundaries of the designated storage area. The Board ordered that the issue of the amount of compensation to be paid to landowners affected by this proceeding be dealt with together with the LCSA Section 38 Application for fair and equitable compensation for all LCSA landowners within Union's territory.

1.2.9 The hearing of the Applications took place at the Holiday Inn, 1498 Venetian Boulevard, Sarnia, Ontario on February 8 and 9 and 10, 2000. An oral summary of the issues was presented by Board staff and the Applicant presented oral reply argument on February 10, 2000.

1.2.10 Representatives of the following parties appeared at the hearing:

Glenn Leslie	Union Gas Limited
Paul G. Vogel Robyn Marttila	Lambton County Storage Association
Philip Walsh Joe Gorman	CanEnerco Limited
Barry R. Card	Township of Dawn-Euphemia