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April 18, 2011

BY EMAIL

Kirsten Walli
Board Secretary
Ontario Energy Board
27th Floor - 2300 Yonge Street
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

Re: EB 2011-0087
Application commenced by M. Snopko et al.

We are counsel to the respondent, Union Gas Limited ("Union"), in the above-noted application. We are writing to provide Union's position with respect to the appropriate procedure for this matter.

At paragraph 2 of their application, the applicants ask that the Board bifurcate the issues raised in the application. They propose that the Board first address the issue of the validity of the contracts attached as Schedule A to the application and, if the applicants are successful, to then address the issue of compensation. Union does not agree with this procedure as it will not meaningfully advance the fair resolution of the applicants' claims.

Background. The applicants are landowners whose land, along with various third parties, forms part of the Edys Mills Pool, one of twenty six natural gas storage pools operated by Union that form part of its integrated natural gas storage and transmission system. The Edys Mills Pool has been in operation since early 1993 after it was designated as such by regulation of the Lieutenant Governor-in-Council and orders issued by the Board authorizing Union to inject, store and remove gas from the Edys Mills Pool (collectively, the "Designation Order").

The dispute between the parties has a lengthy history with certain claims dating back to 1993.

In 2000, the Lambton County Storage Association (the "LCSA"), a voluntary association representing approximately 160 landowners who own property within Union's storage system, commenced an application to the Board on behalf of its members across all of Union's storage system for just and equitable compensation pursuant to section 38(2) of the *Ontario Energy Board Act* (the "Act").

The LCSA was represented by counsel. Marie Snopko and Wayne McMurphy are or were members of the LCSA. Ms. Snopko filed evidence in support of the application.

In March 2004, shortly before the application was scheduled to start, Union and the LCSA reached a settlement. Expressly included in the settlement were all claims which were, or could

have been raised in the application, including claims for disturbance damages and crop loss. The settlement had retroactive effect and covered the years 1999 to 2008, exclusive. By Order dated March 2004 (the "Compensation Order") the Board approved the parties' settlement and determined that it represented just and equitable compensation under the Act.

Following the settlement, and consistent with the terms of an undertaking given by Union to the Board and an earlier Board decision relating to standing, Union extended to all non-LCSA members, and those members who did not receive full standing, an offer to be paid the same compensation as that provided in the Compensation Order. All of the applicants in the present case accepted Union's offer.

Beginning in early 2007, Union had discussions with the LCSA regarding compensation for the period 2009 to 2013. These discussions were successful and resulted in an agreement between the LCSA and Union. In April of that year, the applicants, Eldon Knight and Lyle Knight, accepted the terms agreed to by the LCSA and entered into a further agreement with Union on compensation payable to them for the period 2009 to 2013. Although Ms. Snopko and Mr. McMurphy did not agree to the LCSA terms, they have been paid the higher rates as though they had.

The applicants initially asserted their claims in the Superior Court of Justice. Union defended and denied liability on each basis asserted by the applicants. Union further argued the Court lacked jurisdiction over the applicants' claims, that they were time barred and, in any event, that the plaintiffs already had agreements which provided for just and equitable compensation. In the result, Union was successful on a motion for summary judgment, with the Court holding that the Board has exclusive jurisdiction over the applicants' claims. The Court did not rule on the other aspects of Union's motion.

Union's position as to procedure. The application does not impugn the Designation Order or seek to set aside the compensation agreements entered into by the applicants. Pursuant to the Designation Order, Union obtained the right to inject, store and remove gas from the Edys Mills Pool. This right is not dependent upon any underlying contractual relationship between the parties. Significantly, it is not dependent upon the validity of the gas storage leases which have been impugned. Therefore, even if the applicants could obtain a declaration that the gas storage leases were terminated, which is denied, they would have no claim that Union was storing gas on their property unlawfully. Rather, they would have a statutory claim under the Act to the Board for compensation. In the circumstances, it makes no practical sense to bifurcate the issue of the validity of the leases as they are largely irrelevant to a claim for compensation against Union.

Further, even if the applicants could bring their claims, they entered into agreements which provide for just and equitable compensation. This is the only compensation the Board can order under the Act.

For all of the applicants, the various compensation agreements cover the period through 2008 and, in the case of Eldon Knight and Lyle Knight, through to 2013.

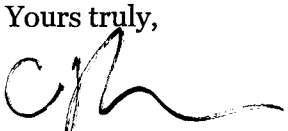
The compensation agreements, which have not been impugned, supplant the compensation provisions contained in the gas storage leases and fully cover all aspects of the applicants' claims for damages. The compensation agreements provide that they reflect the terms of the Compensation Order approved by the Board and cover all claims that were or could have been raised in the 2004 storage compensation hearing. These claims included the claims for crop

loss, disturbance damages (i.e. inconvenience), loss of enjoyment of land and for storage and petroleum and natural gas rights.

To summarize, it is Union's position that the Board should decline the applicants' request to bifurcate the application. Union intends to bring motions challenging the applicants' standing to assert some or all of their claims on the basis of the compensation agreements and the relevant limitations law. Union believes that these motions, which may be dispositive, should be heard first.

In terms of immediate next steps, we suggest a case conference with the Board and Board Staff to set a schedule for the return of the motions. As to the parties to the application (and hence the case conference), we believe the affected parties are the applicants and Union. In our view, a more general notice is not required.

Yours truly,



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