



UNION GAS LIMITED

EB-2011-0013/0014/0015

MOTION BY UNION GAS LIMITED FOR AN ORDER OF  
THE BOARD TO STRIKE KENT FEDERATION OF  
AGRICULTURE INTERVENOR EVIDENCE

**BOARD STAFF SUBMISSIONS**

**April 26, 2011**

## Background

Union Gas Limited ("Union" or the "Applicant") filed an application dated January 17, 2011, with the Ontario Energy Board (the "Board") under sections 36.1(1), 38(1), 40(1) and 90(1) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (the "Act"). The application is for:

- a. designation of the proposed Jacob Gas Storage Pool (the "Jacob Pool") and authority to operate the Jacob Pool pursuant to s. 36.1 (1) of the Act 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 section 40 of the Act.

If the Board grants the above, Union will develop and operate a natural gas storage area on lands located in the geographic area of the Municipality of Chatham-Kent referred to as the Jacob Pool.

A Notice of Application was issued on March 7, 2011 under Board File No.'s EB 2011- 0013, EB 2011-0014 & EB 2011-0015. The Applicant served and published the Notice of Application as directed by the Board.

The registered intervenors in this proceeding are: Invenenergy Canada, Ministry of Natural Resources ("MNR"), Enbridge Gas Distribution Inc. ("Enbridge") and the Kent Federation of Agriculture ("KFA").

On March 29, 2011 the Board issued Procedural Order No. 1 which set the schedule for a written proceeding including a provision for intervenors to file evidence. The Board ordered that "the scope of this proceeding will be limited to the Issues List" attached to Procedural Order No. 1.

On April 11, 2011 the KFA filed intervenor evidence which, it submitted, was appropriately within the umbrella of Issue 1.3 of the Board's Issues List. Issue 1.3 sets out the following: "Does the applicant have the necessary leases and agreements with the directly affected landowners."

It is KFA's submission, in the intervenor evidence, that some leases submitted by the Applicant, as part of its prefiled evidence, contain clauses which indicate minimum annual payments equal to Lambton County Storage Association agreement payments, others appear to be industry "standard" leases, unamended.

In its letter to the Board dated April 11, 2011 and accompanying the proposed evidence, KFA noted that it "is concerned that compensation paid by Ontario storage operators is inadequate and unfair in today's marketplace." KFA noted that "its submission is to put forth evidence to support fairer compensation levels."

On April 14, 2011 Union filed a Notice of Motion regarding the KFA evidence (the "Motion"). The Motion asked for an order of the Board striking the KFA evidence from this proceeding on the grounds that the KFA evidence "is not relevant to the issues in this proceeding".

On April 19, 2011 the Board issued Procedural Order No. 2 which set the schedule for submissions and reply submissions from the parties with respect to the issue of whether the KFA evidence should be struck from the record in this proceeding. Procedural Order No. 2 also set the schedule for a written process for the remainder of the Board's review of Union's applications to develop the Jacob Pool.

By way of letter dated April 20, 2011 KFA filed a Reply submission wherein it stated, among other things, that: "KFA has no objection to the Board making an Order striking the evidence filed by KFA on April 11<sup>th</sup>, 2011 from these proceedings, without prejudice to:

- (a) KFA's right to re-submit its evidence with respect to the issue of compensation in these proceedings; and

(b) KFA's right to move the Board pursuant to section 21(1) of the Ontario Energy Board Act ("OEBA") to order a hearing to determine what constitutes just and equitable compensation pursuant to section 38 (2)."

### **Board Staff Submissions**

Board staff supports Union's Motion requesting that the Board make an Order striking the evidence filed by KFA on April 11<sup>th</sup>, 2011.

Board staff puts forward the following reasons for its support of Union's motion:

1. KFA filed a letter with the Board on April 20<sup>th</sup>, 2011 which confirms KFA's support of Union's motion and its agreement to strike the evidence;
2. As set out in Union's Motion no action or other proceeding lies in respect of compensation payable under s. 38 (3) of the Act and, failing agreement, the amount shall be determined by the Board.
3. An appeal within the meaning of section 31 of the Expropriations Act lies from a determination of the Board under subsection 38(3) to the Divisional Court, in which case that section applies and section 33 of this Act does not apply."

Board staff submits that, consistent with previous Board decisions<sup>1</sup>, an owner of storage rights who has a valid agreement with a prospective storage operator or current storage operator, in this case, Union is not eligible to obtain an order of the Board regarding compensation for the storage rights which are covered by the agreement.

Board staff submits that in this case the landowners referred to in the additional evidence filed by the KFA all have valid agreements with Union. Further, regardless if the individual landowners have agreements, the KFA, is not a landowner within proposed Jacob Pool, and has no standing to file this evidence and bring its motion with respect to the issue of compensation.

All of which is respectfully submitted.

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<sup>1</sup> RP-1999-0047, Union Gas Limited and Ontario Energy Board, Decision with Reasons