Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2012-0314

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 Achiel Kimpe under section 38(3) of the *Ontario Energy Board Act, 1998*, S.O. 1998 for an Order of the Board determining the quantum of compensation the Applicant is entitled to have received from Union Gas Limited.

NOTICE OF APPLICATION AND PROCEDURAL ORDER NO. 1

On July 9, 2012 Achiel Kimpe (the "Applicant") filed an application with the Ontario Energy Board (the "Board") under section 38(3) of the *Ontario Energy Board Act, 1998* (the "Act"). The Applicant identified Union Gas Limited ("Union") as the respondent in the application. The Applicant has requested an order of the Board for compensation for residual gas and use of residual gas from a pressure of 50 pounds per square inch ("psi") to 0 psi used in the operation of Union's Bentpath Storage Pool (the "Pool"). The Applicant is seeking compensation for the period of time from the designation of the Pool to present. The Board has assigned Board File No. EB-2012-0314.

The Applicant is a landowner in the Pool which was designated as a storage area through O. Reg. 585/74 on August 7, 1974. The Pool is operated by Union.

The Board has decided to provide procedural direction to Mr. Kimpe and Union. Mr. Kimpe shall have the opportunity to reply to all submissions received.

The Board intends to hear this application by way of a written hearing unless there is a good reason for holding an oral hearing.

A copy of the application is attached as Appendix A to this Notice.

Participants

The following persons are deemed parties in the proceeding: Achiel Kimpe and Union Gas Limited.

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 THEREFORE ORDERS THAT:

1. Mr. Kimpe shall file any supporting evidence (in addition to that filed with the application), no later than **September 21, 2012**.

2. Union shall file responding material on the application filed by Mr. Kimpe with the Board and deliver it to Mr. Kimpe by **October 5, 2012**.

3. Mr. Kimpe may respond to any of the materials received by filing a reply with the Board and serving a copy on Union by **October 19, 2012**.

All filings to the Board must quote file number **EB-2012-0314** and consist of two paper copies to be filed with the Board Secretary. For parties with internet access one electronic copy in searchable / unrestricted PDF format is to be filed through the Board's web portal at www.pes.ontarioenergyboard.ca/eservice. Filings must clearly state the sender's name, postal address and telephone number and, if available, a fax number and e-mail address.

If the web portal is not available, you may e-mail your document to Boardsec@ontarioenergyboard.ca.

ADDRESSES

The Board:
Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Attention: Board Secretary
Filings:
https://www.pes.ontarioenergyboard.ca/eservice

E-mail: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

The Applicant:
Achiel Kimpe
Box # 2
Corunna, ON
N0N 1G0

Tel: 519-862-5658

The Respondents:
Union Gas Limited
Mark Murray
50 Keil Drive North
P.O. Box 2001
Chatham ON N7M 5M1

E-mail: mmurray@spectraenergy.com
Tel: 519-436-5601
Fax: 519-436-4641

DATED at Toronto, August 30, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Appendix A to

Notice of Application and Procedural Order No. 1

Application

Board File No. EB-2012-0314

DATED: August 30, 2012

EB-2012-0314

RECEIVED

Filed 10/7/12

July 9, 2012.

JUL 10 2012

OEB Application # _____

ONTARIO ENERGY BOARD
OFFICE OF THE BOARD SECRETARY

ONTARIO ENERGY BOARD APPLICATION
Under Section # 38.3 / any other appropriate Section of the OEB Act

Between;

ACHIEL KIMPE Applicant

-and the-

ONTARIO ENERGY BOARD

Introduction;

1. I, the Applicant, am seeking an order of the Board for compensation for residual gas / use of the residual gas from 50 to 0 psi, as part of a necessary "cushion" in a storage operation, from Designation to present.

2. I have not consulted / retained Counsel / a Consultant in this matter, should the Board determine this to be necessary it would be at Board expense.

3. The above issue to be settled be treated as a private matter, with no public hearing and all future contact between any / all parties be in writing.

4. Should the Board conclude that I am entitled to some form of compensation for my portion of the cushion gas I request that I be involved in the determination of the compensation methodology / amount prior to any order.

Statement of Facts;

1. I am a Landowner with lands within the boundaries of a Designated Storage Area, operated by Union Gas Ltd., commonly known as Bentpath Pool.

2. I have no storage contract, I do however have a Production Lease. Having no Storage Agreement I am therefore not bound, as others may be, to give any party the free use of my natural gas from 50 to 0 psi in a storage operation. Claims that gas from 50 to 0 psi has no value, I would suggest is absurd to say the least, in light of the fact others have been compensated outright / paid a rental use of this gas.

3. Having no storage agreement I submit that I have been expropriated, Board staff has confirmed this as fact.

4. Further Board staff also confirms that 50 to 0 psi as it relates to an expropriated Landowner has not been addressed by the Board.

5. 50 to 0 psi has / had value in several other pools as stated in a letter to the Board, including the payment of a rental (which would be my preference). To reiterate those pools are;

Zurich is at 0 psi	- not yet designated
Zone	- not yet 0 psi but close?
Jakob	- below 50 psi (46?)
Edys Mills	- payed to 0 including solution gas
Dow - Moore	- the residual (cushion) gas is rented

6. Union has refused to negotiate but indicated it has & will comply with any order of the Board.

7. As the expropriation agency the Board has not only a statutory obligation but also the authority to insure a Landowner is fully compensated for any expropriated assets and equality where pertinent. as in this case is any expropriated Landowner in the same circumstance as I.

8. I respectfully request that in determining compensation for my portion of residual gas 50 to 0 psi the Board be mindful of the fact that Union has had the use of my asset (natural gas) for some 30 years solely due to the fact Union was never ordered to pay below 50 psi.

9. The expropriation issue was fully circumvented by the Board (at the time) by treating me the same as other Landowners - this position by the Board was & is in error. The Board at the time side stepped the expropriation issue / bought into the "no value" argument presented by Union. Granted that in many / most instances Landowners signed a Storage Agreement with compensation only to 50 psi.

10. Under normal circumstances production is down to 0, no matter what the material produced / harvested, the lease then automatically terminates / is released, I believe this strengthens my claim for compensation to 0 psi as Union still holds the Production Lease and the obligation of production to 0 psi still exists.

Attachment;

Attached are pages (3), for Board perusal & consideration, out of the report prepared by the industry & more specifically Union Gas & Enbridge for the Min. of Natural Resources. The report was needed for the formulation & passing of Ont. Reg. # 263/ 02. Read in particular "Residual Gas New Revenue Opportunity" note the various forms of compensation options available to a Landowner.

Summary;

I request my cost of this Application pursuant to Rule 41 of the OEB Rules and Procedure and such further and other relief as the OEB may deem just, such as interest on any compensation and I not be bound by any statutory limitations.

The Board has been kept aware of all correspondence between myself and other parties & should it on file.

Should the Board request a hearing I wish it to be held in Sarnia.

Respectfully; Written to the best of my Ability Knowledge

Sign; Achiel Kimpe

Achiel Kimpe,
Box # 2,
Corunna, Ont., N0N-1G0

Phone # 1-519-862-5658 - (I have no Email / Fax)

The "royalty" component represents the payment to freehold landowners for the surface rights, and as such the quantum of this payment should be comparable to that paid to freehold landowners for the same rights, adjusted for the quality and location of the reservoir. The proposed royalty mechanism will add costs to the overall storage development and to the administration of the leases.

By adding additional costs, such as the proposed royalty tax component, the parties will respond by tendering a lower price for the acquisition rights component as the bid price represents the most they can afford to pay given their forecast of costs and revenues (again in the same manner describe above for production and freehold storage rights). For the market price to be as high as possible, the ongoing operating costs must be as low as possible and as certain as possible.

Adding costs through another component, such as the royalty tax payment, does not increase the overall revenue flowing to the Crown. But given that it adds increased uncertainty to the storage companies future business costs, the overall revenue flow to the Crown will in all likelihood be lower.

The bid price will reflect the total operating and development costs. The greater certainty of those costs, the less risk to the developer, and the higher price the parties will be willing to bid for the acquisition rights component. As a result, the storage companies recommend that the compensation for storage rights on Crown lands emulate the compensation methodology for freehold lands, and have only two components; a bid price for the rights and an area rental.

The winning bidder will be granted the storage rights and the bid price will reflect the full market value for those rights as in the freehold process. The area rental fee should be a fixed per acre fee that reflects formation differences adjusted for offshore versus onshore development. This annual rental could be increased over time, in the same manner as freehold properties, based on the Consumer Price Index.

Residual Gas New Revenue Opportunity:

The rights to the gas remaining in the reservoir at the conclusion of production operations in a depleted reservoir or remaining in the reservoir at the time of conversion to gas storage, needs to be acquired by the successful gas storage development company as it forms part of the reservoir's cushion gas.

This gas generally carries payment obligations to two participants. The first participant is the production company who owns 87.5% to 90% gross revenue interest in the remaining gas. A common approach for the purchase from the producer is a determination of the Net Present Value of the Remaining production down to a reasonable abandonment pressure calculated at an Industry accepted pre-tax discount rate of 15% over the productive life of the pool, inclusive of operating expenses and abandonment obligations.

The second participant is the landowner, who typically retains a 10% to 12.5% Gross Revenue Interest in the remaining producible gas. One approach would be

to treat the payment obligation to the Crown, who in this case is the landowner, in the same manner that freehold interest owners are dealt with under the terms of their leases for a typical storage development project, which is a one-time purchase of the interest.

This "one-time" purchase approach as described in the lease requires the company to make a purchase offer prior to injecting gas into the reservoir. The typical method is to calculate the volume using accepted reservoir engineering methods, multiplied by either the price paid to the producer or the Ontario Producer Price established in the month of injection at the Dawn hub.

The lease provides for this payment to be made in five equal instalments to emulate the time period over which the gas would otherwise be produced. However, in recent years, the landowner can typically elect to receive the payment in a single lump sum. Of course the Crown and the utility can agree on any number of payment methodologies. The storage company owns the gas immediately upon making the payment to the landowner, or the Crown.

Based on the size of the reservoirs in Lake Erie and the ratio of Cushion Gas to Working Gas, the size of the payment is far greater than in a typical land-based pinnacle reef storage pool, and consequently could limit development. As a result, a number of alternate methods are proposed for discussion. It should be noted that these alternative methods spread out the payment obligation over time.

A second approach would be to make payments to the Crown based on an industry estimate of the production volume decline had the reservoir continued to produce multiplied by the prevailing monthly Ontario Producer Price at the Dawn trading hub.

The advantage of this method for the Crown is that the value is not determined at a single point of time and as such the price risk is spread over a period of time. Since the gas stream is deemed to be produced and paid for over time so that at the end of the term ownership has transferred to the storage company.

A third approach would be a "rent-to-own" approach. This approach establishes a value for the gas the same as for the outright purchase for the Crown, but spreads the payments out over an agreed to term using appropriate amortization rates. The cost of gas purchase is spread out over time with the storage company owning the gas at the end of the term.

A fourth approach could be a straight rental plan that provides the storage company with the use of the gas as cushion gas without actually owning it. This approach is similar to Union's arrangement with the former Chippewa band in the Dow-Moore Pool. Again this approach establishes a value for the gas in the same manner as for the outright purchase from the Crown, but in contrast spreads the payments out over a much longer term using appropriate amortization rates described in terms of prime + x%.

The rate could be fixed or recalculated periodically based on the change in actual interest rates. The advantages to the Crown is that they maintain ownership of

the gas, the value of the reserves is preserved for the life of the project and the gas can be re-priced periodically or upon change of operator.

The disadvantage of course is that the payments represent the pure rental value of the gas only and are therefore smaller than in the third approach.

The values for any of the above residual gas compensation methods are relatively easy to calculate. As each approach is really only a financial derivative of the others, it really becomes a matter of the Crown's preference as to which approach is preferred.

Compensation concerns:

The Ontario natural gas storage companies are very supportive of the notion that the Crown receives fair market compensation from the leasing of crown land storage.

Natural gas storage is a very competitive industry, especially within the Great Lakes basin. Market participants based in Michigan, Pennsylvania, Illinois, Ohio, New York & Indiana all offer storage that competes directly with Ontario.

Given the competitive natural of the Great Lakes basin storage marketplace, anything less than market value for crown land storage would represent an unfair subsidy to an individual firm and would not be an acceptable practice.

It is therefore critical that any cost structures featured by the Crown for storage on its lands be consistent with the competitive marketplace.

Open tendering bid processes will ensure that the Crown's storage lease arrangements fetch fair market value. An open bid process allows the bidding company to reflect the value of the type, quality and location of the reservoirs, in its bid. Lease arrangements are the market norm and represent an appropriate revenue generating mechanism for the Crown to employ.

One charge the Crown is seeking to impose on the marketplace is a new royalty fee scheme, whereby a charge would be levied on the storage companies for natural gas injected and withdrawn on crown land storage.

Royalty fees do not exist within the Ontario natural gas storage industry nor do they exist in any storage jurisdiction in North America, and in particular not within the neighbouring and competitive Great Lakes basin. The royalty scheme proposed by the Crown introduces a new and completely artificial cost mechanism into the marketplace.

Application of such an artificial charge to onshore storage leases would clearly place Ontario storage at a competitive disadvantage. The imposition of a charge with such precedence adds additional risk to the development of storage on Crown lands, thereby reducing the likelihood of it proceeding, and if adopted on freehold lands, would discourage future onshore storage development in Ontario.