

October 5, 2012

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli

**Re: EB-2012-0314
Union Gas Limited ats Achiel Kimpe**

This is an application by Mr. Achiel Kimpe for an order providing just and equitable compensation for residual gas located in the portion of the natural gas storage pool known at the Bentpath Pool located under his property. Union Gas Limited ("Union") submits that the application is without merit and should be rejected by the Board.

We enclose Union's evidence in response to the application. Union requests that the Board reject the application for the following reasons.

First, the Board has already ruled, in proceeding EBO 64 (1) & (2), on the just and equitable compensation owed to the Applicant and other Bentpath Pool landowners in respect of residual gas. In the context of that decision, rendered in 1982, the Board considered, and rejected, the Applicant's claim for compensation with respect to residual gas at pressures below 50 psia. The Applicant, who was represented by counsel in that proceeding, received compensation for residual gas in accordance with the Board's order in 1982. The Applicant's entitlement to compensation for residual gas was a one-time issue heard and disposed of in 1982.

Second, there has been no change in circumstances since 1982 that would justify a variation of the Board's order or a deviation from Union and industry practice that compensation to landowners for residual gas is owed only with respect to gas which is commercially recoverable, at pressures of 50 psia or above. The threshold pressure level of 50 psia represents the average level at which gas is commercially recoverable. This threshold for compensation is widely used in Ontario in agreements with landowners, and was accepted by the Board in its 1982 decision and in its decisions in proceedings RP-2000-0005 and EBO 184.

Third, the Applicant provides no evidence of any change in circumstances that would justify a deviation from the Board's decisions or from Union and industry practice. At paragraph 5 of his application, the Applicant refers to compensation paid to Oil Springs East and Edys Mills Pool landowners for storage of residual gas at pressure levels below 50 psia. The compensation paid in these cases was the result of extensive negotiations with landowners and is not representative of industry practice or of the commercial recoverability of residual gas at lower pressure levels.

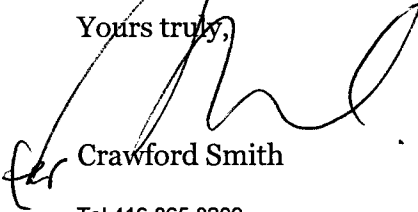
The Board recognized these two examples as exceptions to industry practice in its decision in proceeding EBO 184 brought by Sombra Pool landowners.

Fourth, the Applicant was a party to a settlement agreement with Union in the RP-2000-0005 proceeding, which dealt with compensation for natural gas storage and residual gas. The settlement agreement, to which the Board gave effect, provided that the settlement covered all claims for compensation asserted in the amended application, the evidence and the answers to interrogatories for the period from 1999 to 2008. The Applicant, who was represented by counsel, clearly could have asserted in the RP-2000-0005 proceeding the claim for additional compensation for residual gas he now advances, but chose not to do so. In accordance with the settlement agreement, he is barred from seeking additional compensation for residual gas.

In any event, "just and equitable compensation" for natural gas storage within the meaning of section 38(2) of the *Ontario Energy Board Act, 1998* can only mean compensation for natural gas storage that is commercially recoverable. Payments for residual gas are intended to compensate landowners for the loss of royalties to which they otherwise would have been entitled had gas been produced and the pool not been converted to storage. The principle that compensation should only be paid in relation to commercially recoverable gas is reflected in the Board's report dated May 4, 1964, led by Chairman A.R. Crozier. There is no reason why compensation should be paid in respect of gas that is not commercially recoverable. A commercial recoverability threshold of 50 psia is still widely accepted by the industry and was accepted by the Board in the two decisions referenced above.

We look forward to receiving the Board's decision in this matter.

Yours truly,



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Enclosures

cc. Myriam Seers, Torys LLP
Achiel Kimpe