



ONTARIO ENERGY BOARD

STAFF SUBMISSION

Tribute Resources Inc.

**NOTICE OF MOTION TO VARY
Board's Decision and Order**

EB-2011-0076

EB-2011-0077

EB-2011-0078

EB-2013-0059

April 23, 2013

Introduction

Tribute Resources Inc. and Bayfield Resources Inc., on behalf of Huron Bayfield Limited Partnership and Bayfield Pipeline Corp. (“Tribute”) filed with the Ontario Energy Board (“Board”) a Motion to Vary (“Motion”) that part of the Conditions of Approval attached as Schedule “1” to an Order of the Board dated December 21, 2012 (the “Injection Order”) in respect of Tribute’s applications (EB-2011-0076, EB-2011-0077 and EB-2011-0078). Specifically Tribute is asking the Board to vary the date in Condition 1.7 from “July 1, 2016” to “January 1, 2017”. Tribute is also requesting an Order extending the time to file its Motion. The Board has assigned the Motion file number EB-2013-0059.

The Board issued a Notice of Motion to Vary and Procedural Order No. 1 on March 13, 2013.

Background to the Motion

Tribute filed applications to develop natural gas storage pools in the County of Huron and in the County of Middlesex Ontario (the “Projects”). The Bayfield and Stanley 4-7-XI natural gas storage pools (collectively referred to as the “Pools”) have a capacity of approximately 10 billion cubic feet with a planned in-service date 2016. The Projects include the construction and operation of a transmission pipeline to connect the Pools with Union Gas Limited’s (“Union”) pipeline system.

The applications were organized into four Board Files as follows:

- a. Development of Stanley 4-7-XI Pool (Board File No. EB-2011-0076)
- b. Development of the Bayfield Pool (Board File No. EB-2011-0077)
- c. Leave to Construct a Natural Gas Pipeline (Board File No. EB-2011-0078)
- d. Request for Determination of Compensation (Board File No. EB-2011-0285)

The Board approved all of the applications, except the application for compensation under section 38(3), which has been stayed. The various approvals sought were made subject to conditions attached to the Board’s Orders under sections 36.1(1); 38(1) and 90(1) and the Board’s Report to the Ministry of Natural Resources pursuant to section 40(1) of the Act.

Extension of Time

Tribute has requested an extension of time for filing this Motion. In Board staff's submission the request should be denied. There is nothing compelling in the evidence put forward by Tribute to suggest that an extension of time is warranted. Board staff submits that parties are expected to abide by the time lines set out in the Board's Rules of Practice and Procedure. Tribute had twenty days to seek a motion to review, however its Motion was filed on February 22, 2013, more than sixty days after the original Decision was issued. As such, Board staff submits that the extension of time to seek a review is not warranted. If the Board does grant the extension of time for review, Board staff submits that the Board should not grant the relief requested by Tribute and should deny the Motion.

The Grounds for the Motion

In its Motion Tribute submitted that the facts giving rise to the Motion constitute new facts that have arisen since the date of the Board Order and further constitute a change in circumstances impacting Tribute and the future development of the Pools within the meaning of Rule 44.01 of the Board's Rules of Practice and Procedure ("Rules").

One of the grounds for review set out in Tribute's Motion is the fact that Tribute entered into a Term Sheet dated April 30, 2012 with Market Hub Partners Canada LP ("MHP Canada") and Union as amended by an Amending Agreement dated October 31, 2012 (collectively the "Term Sheet"). The Term Sheet required that Tribute repay MHP Canada the sum of \$1.5 million plus accrued interest if the Board Order in the above referenced proceedings did not contain a condition that would allow the development of the Pools between the time of issue of the Board Order and December 31, 2016. Board staff submits that this is not a new fact. The conditions of the Term Sheet were known to Tribute at the time of the original proceeding.

The Board's Rules of Practice and Procedure

Rule 44.01(a) of the Rules provides the grounds upon which a motion may be raised with the Board:

Every notice of a motion made under Rule 42.01, in addition to the requirements under Rule 8.02, shall:

- (a) set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:

- i. error in fact;
- ii. change in circumstances;
- iii. new facts that have arisen; and
- iv. facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time.

In the NGEIR Review Decision, the Board stated that the "the review is not an opportunity for a party to reargue the case:"¹

In demonstrating that there is an error, the applicant must be able to show that the findings are contrary to the evidence that was before the panel, that the panel failed to address a material issue, that the panel made inconsistent findings, or something of a similar nature. It is not enough to argue that conflicting evidence should have been interpreted differently.²

In the *Grey Highlands v. Plateau* decision the Divisional Court stated:

The Board's decision to reject the request for review was reasonable. There was no error of fact identified in the original decision, and the legal issues raised were simply a re-argument of the legal issues raised in the original hearing.³

Board Staff's Submission – There are No New Facts and No Change in Circumstance

Board staff submits that Tribute asked for a December 2016 date for development commencement in its Reply submission. In its Reply submission in the original proceeding Tribute stated:

For purposes of clarification within these Reply submissions, it should be noted that Market Hub Partner's ("Market Hub") involvement in the continued development is subject to satisfying certain requirements of the Term Sheet between Market Hub and Tribute, including development commencement approval up to December 31, 2016, receipt of a DSA order and the associated Inject, Store, and Withdrawal orders. While Tribute proposed a December 2016 in-service date, Board staff submitted that significant changes in land-use, ownership and potential environmental impacts could occur in the intervening four years.

¹ EB-2006-0322/0388/0340, NGEIR Decision, pages 16 and 18

² Ibid., page 18.

³ *Grey Highlands (Municipality) v. Plateau Wind Inc.* [2012] O.J. No. 847 (Div. Court) ("*Grey Highlands v. Plateau*") paragraph 7

The Board agreed with Board staff that circumstances may change over the period from now until the end of 2016 and addressed this in the Conditions of Approval attached to the Board's Orders authorizing operation of the Pools under s. 38(1) of the Act.

Condition 1.7 reads as follows:

Should Tribute fail to commence injection before July 1, 2016, Tribute shall be required to apply to the Board for an extension of the authority granted under the Board's Order and will be required to submit evidence to show why such an extension shall be granted.

Board staff submits that it is clear that Tribute's request for a December 2016 date was squarely before the Panel in the original proceeding. In Board staff's view, the evidence put forward by Tribute in this Motion is in the nature of a contractual disagreement with MHP Canada and is neither a new fact nor does it constitute a change in circumstance which would support the Board varying its original Decision. For the above reasons Board staff submits that the Motion should be denied.

- All of which is respectfully submitted -