



EB-2006-0020

IN THE MATTER OF the *Ontario Energy Board Act*,
S.O. 1998, c. 15, Sched. B;

AND IN THE MATTER OF an Application by Union Gas Limited for approval of the parties to, the period of, and the storage that is the subject of a long-term gas storage contract, identified as Contract No. LST050, between Union Gas Limited and Nexen Marketing.

BEFORE: Cynthia Chaplin
Presiding Member

DECISION AND ORDER

1.0 The Application and Background

On February 3, 2006, Union Gas Limited (“Union”) filed an application with the Ontario Energy Board (the “Board”) under Subsection 39(2) of the *Ontario Energy Board Act, 1998* (the “Act”) for an order of the Board approving, without a hearing, the parties to, the period of, and the space for storage that is the subject of a long-term gas storage contract (the “Contract”) with Nexen Marketing (“Nexen”). Subsection 39(2) of the Act that allows Board approval without a hearing.

In the Board’s Natural Gas Forum Report, dated March 30, 2005, the Board indicated that it will review the issue of whether it should refrain from regulating some or all matters relating to gas storage (the “Storage Review”). The Board

plans to carry out the Storage Review as part of the Board's Natural Gas Electricity Interface Review ("NGEIR"). In view of this, when reviewing an application involving gas storage, the Board takes into account any potential adverse impact of the application on the Board's ability to consider issues in the Storage Review portion of the NGEIR proceeding.

A Notice of Application for this proceeding was issued on February 16, 2006 and was served on all the participants in the Natural Gas Forum, NGEIR and Natural Gas 2006 Rate hearings. In the Notice, the Board asked for written submissions from interested parties that believe they will be adversely affected in a material way by the outcome of this proceeding. The Board received two responses, neither of which indicated that they would be adversely impacted by this proceeding. No party requested that the Board hold a hearing in respect of this proceeding.

The Board has assigned file number EB-2006-0020 to this application.

2.0 The Contract

Union and Nexen have entered into a long-term gas storage contract (the "Contract"), dated April 1, 2006, attached as Appendix A. The Contract would, subject to Board approval, provide Nexen with 2,110,112 GJ (1.97 Bcf) of firm gas storage space for the period April 1, 2006 to March 31, 2010. The first contract year will be covered under the parameters of the current Board-approved blanket storage policy and Union is seeking approval for continuation of the contract for the second, third and fourth contract years.

3.0 Union's Evidence

Union submitted that the only parties affected by this application are Union and Nexen and that no other party will be adversely affected in a material way by the outcome of this application. Union noted, however, that Nexen would be adversely impacted if this application is not approved on a timely basis. Union indicated its awareness of the storage review that will be undertaken as part of the Board's NGEIR proceeding. Union maintained, however, that the Board's ability to consider storage issues in the NGEIR will not be hindered by this application. Union submitted that it continues to manage a significant portfolio of ex-franchise storage that can be used to accommodate the growth in in-franchise

storage needs. Accordingly, Union submitted that the Board's approval of this application will not affect Union's ongoing ability to meet future growth in storage requirements for its in-franchise customers.

Union requested that the commercial terms of the Contract be held in confidence as per Rule 13 of the Ontario Energy Board "Rules of Practice and Procedure". The reason for this request is that the Contract contains information that is commercially sensitive, and may harm both the customer's and Union's competitive position in the marketplace and their ability to fairly conduct business.

4.0 Submissions of Parties

Gaz Métro supported the approval by the Board, without a hearing, of Union's application for approval of a long-term storage contract with Nexen. Gaz Métro expressed the view that no material adverse impact will result from approval of the contract and that it sees no reason to delay the approval, even though issues related to gas storage will be considered in the NGEIR proceeding.

Nexen submitted that, as in the recent past, Nexen has and continues to support approval of these normal course activities, both in general and as a party to the subject application. Nexen also expressed the view that approval of this long-term storage contract should not impede the Board's ability to review and consider issues introduced in the Storage Review portion of the NGEIR proceeding.

Nexen also submitted that delay in approval of this Application until completion of the NGEIR proceeding would introduce regulatory uncertainty that will have a significant impact on Nexen as well as the entire Ontario natural gas storage market and that such a delay would have an adverse impact on Nexen by introducing risk, cost and undue uncertainty.

Nexen concluded its submission by urging the Board to approve the application as submitted, without a hearing and on a stand-alone basis, independent of the future anticipated Storage Review portion of the NGEIR.

5.0 Board Findings

Under Subsection 39(2) of the Act, the Board can approve applications for gas storage contracts with or without a hearing. The criteria for proceeding without a hearing under this subsection are not set out in the legislation. The strictest test that may arguably be applied would be the test enunciated in Subsection 21(4)(b), which states that the Board may proceed without a hearing if it determines that no person would be adversely affected in a material way by the outcome of a proceeding. Having considered the evidence, and the submissions of parties that responded to the Notice, the Board has determined that a hearing is not required and that it will proceed without a hearing.

The Board accepts Union's submission that no party will be adversely affected in a material way by the approval of this application and that Nexen would be adversely impacted if this application is not approved on a timely basis.

The Board also accepts Union's position that the Board's ability to consider issues in the Storage Review portion of the NGEIR proceeding will not be hindered by this application. The Board notes that Gaz Métro and Nexen are also in agreement with this.

The Board accepts Union's submission that the Board's approval of this application will not affect Union's ongoing ability to meet future growth in storage requirements for its in-franchise customers.

The Board acknowledges Nexen's submission that a delay in approval of this application would have an adverse impact on Nexen by introducing risk, cost and undue uncertainty.

For the above reasons, the Board finds that approval of Union's application is in the public interest. The Board also finds that it is in the public interest not to disclose the pricing information contained in the contract, as requested by Union.

THE BOARD ORDERS THAT:

1. The parties to, the period of, and the storage space that is the subject of the contract between Union Gas Limited and Nexen Marketing, dated April 1, 2006 and designated LST050 are approved. A redacted non-confidential version of the contract is attached to this Decision and Order as Appendix A.

2. Union shall file original signed or certified copies of the executed contract with the Board as soon as they are available.
3. The unredacted confidential version of the contract shall not be placed on the public record.

DATED at Toronto, March 23, 2006.

ONTARIO ENERGY BOARD

A handwritten signature in black ink, appearing to read "P. O'Dell", with a long horizontal line extending from the end of the signature.

Peter H. O'Dell
Assistant Board Secretary

**APPENDIX “A” TO
BOARD DECISION AND ORDER
IN THE MATTER OF EB-2006-0020**

Being a redacted, non-confidential version of a contract for storage services between Union Gas Limited and Nexen Marketing, identified as Contract No. LST050.