

Review of past Ontario Energy Board Cases

Mineral Estate vs Surface Estate

RP-2000-0005 Decision and Order dated September 10, 2003

Section 3.9 Knox Dawn Presbyterian Church

3.9.1 Evidence

Dawn 156 Pool was designated for storage in 1962. Considerable evidence was filed relating to the conveyance of real property to the Knox Dawn Presbyterian Church and the reservation of the mineral rights to the Canada Land Company.

There is no agreement related to compensation for gas storage.

3.9.4 Board Findings

The Board finds that the Knox Dawn Presbyterian Church has a beneficial interest in this proceeding which entitles it to obtain an order of the Board dealing with compensation for gas storage and to participate actively in the proceeding.

The Knox Dawn Presbyterian Church example is very similar to the current Application. In both cases the land was severed into a mineral estate and a surface estate. The Board found that Knox Dawn Presbyterian Church had a beneficial interest in the gas storage rights and therefore was entitled to “fair and equitable” compensation. The Board did not comment as to who was the legal owner of the pore space rights in this case.

Equitable Treatment

Board’s Reasons for Decision in the Bentpath Pool Landowners application dated July 16, 1982

“Those landowners that have agreements have no standing before the Board in this proceeding, and Union is legally required only to pay the amount of compensation required by such agreements. For obvious reasons it is desirable that all landowners in a pool be treated equally and the Board would encourage Union to adopt a uniform treatment for all landowners in the Bentpath Pool. It recognizes that it does not have the jurisdiction to order Union to do this.”

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“The Board accepts Union’s position that, consistent with previous Board decisions, an owner of storage rights who has a valid agreement with Union is not eligible to obtain an order of the Board regarding compensation for the storage rights which are covered by the agreement. However, an owner of storage rights has a reasonable expectation, also consistent with previous Board decisions, that he or she may

ultimately receive compensation that is equivalent to other storage owners in the same pool whose compensation is fixed by the Board.”

“While the Board accepts that in law a number of challenged applicants are not eligible for an order under section 38 at this time, the Board is concerned that these applicants, along with all others, be treated equitably. The Board notes that Union has demonstrated in recent decades its willingness to adjust compensation voluntarily. Accordingly, the Board expects that Union will consider extending to these applicants at the conclusion of the proceeding or, at another appropriate time, an offer which is equivalent to the compensation determined by the Board for those entitled to an order under section 38 should such compensation be materially greater than that which they are currently receiving.”

The common principle throughout the above referenced Board’s decisions is one of equality. Even in cases where there is no legal requirement for a storage operator to adjust compensation the Board has encouraged the operator to do the right thing and make everyone feel as though they are being treated equitably.

In all these instances the Board was referring to equality across all landowners in a given pool. Do not the same “obvious reasons it is desirable” within a given pool apply to compensation across all pools? Should not the same principle of equality also require a “uniform treatment” for all landowners within Ontario? Why would the Crowland Pool landowner not have “a reasonable expectation” that they would receive compensation that is equivalent to other storage owners in other pools whose compensation has been approved by the Board?

The Lambton vs Crowland submission illustrates that there are vast differences between the productivity metrics of all the storage pools in Ontario. Yet 94% of the DSA acres in Ontario receive the same rate of about \$134 per acre. Crowland receives \$6 per acre.

When speaking with a representative from Union Gas we asked him why does Union Gas pay the landowners of the Payne Reef Pool the same \$134/acre as the landowners of the Edy’s Mill Pool given the significant difference in the geology underneath each respective pool? His answer was that it was the fair and equitable thing to do.