Answers to OEB

Answer to OEB Question #1(a):

April 1957

Jim and Theresa A. M. Babirad (Jim's wife) purchase 42 acres from Charles Kramer.

We apologize to the Board and Enbridge for misstating the property's acquisition date in the Application (1962 vs 1957). The property's house was built in 1962 but the property was acquired in 1957. We are sorry for any confusion this may have caused either the Board or Enbridge.

Mr Kramer made a sworn declaration at property closing that there was no valid P&NG leases outstanding (see attachment to Questions for Enbridge submission).

Jim or Theresa A.M. Babirad never signed a P&NG lease at any time.

March 1959

Ownership of the 42 acres was transferred from Jim Babirad and Theresa A.M. Babirad to Theresa Babirad (Jim's mother) and Theresa A.M. Babirad.

Theresa Babirad (Jim's mother) never signed a P&NG lease at any time.

1962-1965

Jim Babirad on behalf of Theresa Babirad and Theresa A.M. Babirad negotiated with Consumers Gas about a storage rights lease agreement. After several years of unsuccessful negotiations Consumers Gas suggested binding arbitration. Mr Babirad accepted binding arbitration as long as he was allowed to choose the arbitrator. Consumers Gas agreed. Once Mr Babirad revealed who he had chosen as his arbitrator Consumers Gas declined arbitration. The negotiations were abruptly ended by Consumers Gas.

Throughout this process neither Consumers Gas nor the Ontario Energy Board made Mr Babirad aware of his right to seek "just and equitable" determination of compensation via the OEB Act Section 38(3)

September 1964

Mr Babirad attended OEB hearing as per Enbridge submission point #20.

February 1965

OEB issued leave to inject, store and withdraw order in respect of the Crowland Pool as per Enbridge submission point #26.

June 1965

Given that Consumers Gas refused binding arbitration and had abruptly ended negotiations over a storage lease agreement and given that Mr Babirad was unaware of his right to seek "just and equitable" determination by the Board his only remaining option at that time was to hire a lawyer in order to pursue a valid storage rights lease agreement.

Mr Babirad calculated that the legal cost of further pursuit of an acceptable storage lease agreement with Consumers Gas significantly overwhelmed the benefit of achieving such an agreement.

June 1965 to June 2013

Consumers Gas/Enbridge never contacted Mr Babirad regarding renewing efforts to agree upon a valid storage lease agreement. In fact, Mr Babirad never received any communication about anything from anybody regarding the Crowland Pool since 1965 until Terry Chupa of Enbridge contacted Mr Babirad in 2013.

Why did Consumers Gas/Enbridge not have the necessary internal systems and controls in place from 1965 to 2013 in order to flag to the Company that Mr Babirad, or any other uncompensated landowner within an Enbridge storage pool, was not being compensated for their storage rights that were expropriated?

July/August 1965

Consumers Gas offered to purchase the property's mineral estate. Mr Babirad on behalf of Theresa Babirad and Theresa A.M. Babirad accepted the offer. (The Indenture submitted with the Application)

August 1970

Joint ownership of the 42 acres was transferred from Theresa Babirad (Jim's mother) and Theresa A.M. Babirad back to Jim Babirad and Theresa A.M. Babirad.

July 1975

Jim Babirad and Theresa A.M. Babirad subdivided their property and sold 24 acres to Mike Lazowski.

September 2011

The current owners purchase the 24 acres. Their names and address are as follows:

Derek Terelly
Daryl Terelly
3841 Miller Road
Port Colborne ON L3K 5V5

The current owners have been aware of these proceedings from the very beginning. They fully support the application and assumed that whatever outcome applies to Mr Babirad will also apply to them. Derek and Daryl Terelly are fully aware and agree to the fact that Paul Babirad is representing their interests in this application. The current owners are willing to provide any document necessary in order to show their agreement of the current application.

Answer to OEB Question # 1(b):

At the most fundamental level Mr Babirad is seeking "just and equitable" treatment from Enbridge for both himself as well as the other Crowland pool landowners.

The key stumbling block in negotiations between Mr Babirad and Enbridge revolves around the appropriate application of Principle #6 from the Crozier Report. Mr Babirad only asks that Principle #6 either be applied uniformly across all of Ontario's storage reservoirs or not be applied at all.

If Principle #6 of the Crozier Report is **applied uniformly and equally to all** of Ontario`s storage reservoirs then the industry`s landowner compensation lease rates would be approximately equal to those presented in Appendix #1 of the Lambton vs Crowland Submission.

Alternatively, if Principle #6 of the Crozier Report is **not applied to any** of Ontario`s storage reservoirs then the negotiated Lambton benchmark rate ($136/acre) would be received by **all** of Ontario's landowners within an OEB designated storage area.

Mr Babirad is agnostic to which of the above scenarios the industry/OEB chooses. Each of the scenarios treats all of Ontario's DSA landowners "just and equitably" consistent with the foundational principles established in the OEB Act and the Crozier Report.

Enbridge's negotiating stance to date has been ad hoc. Enbridge only wants to apply Principle #6 of the Crozier Report to the Crowland pool -- for all other storage reservoirs in Ontario Principle #6 should not be applied. This negotiating posture violates the core principle of equality first established within the OEB Act in 1960 and subsequently reinforced by OEB decisions over the past 55 years.

Mr Babirad is optimistic that in the end Enbridge will want to adhere to one of the fundamental pillars of the OEB Act and therefore the prospects of successful negotiations between Mr Babirad and Enbridge are quite favourable.

Answer to OEB Question #2:

OEB Act 38(2) Right to compensation

Subject to any agreement with respect thereto, the person authorized by an order under subsection (1),

(a) shall make to the owners of any right to store in the area just and equitable compensation in respect of the right to store gas.

Throughout the settlement discussions Enbridge has maintained that because they purchased the mineral estate (the Indenture in the Application) from Mr Babirad in 1965 they were the **owners** of the storage rights and hence no compensation to Mr Babirad was required.

Quoting from a memo from Terry Chupa to Jim Babirad and Paul Babirad dated June 16, 2014 (Tab "U" in Enbridge evidence submission)

> *"At that time, Consumers was of the opinion that this indenture granted to Consumers' the depleted gas reservoirs (as mines) and it had the rights to store gas within them under the designation order. As Enbridge is the owner of the subsurface mines, you are in a different position than other property owners in the Pool as they have retained ownership of such subsurface structures and lease them to Enbridge pursuant to the Gas Storage Leases which entitle the owners to the rental payments provided for in the Gas Storage Leases."*

Mr Babirad disagreed with Enbridge's legal opinion. The evidence submission titled "Who owns the Pore Space? Surface Estate vs Mineral Estate was intended to prove to Enbridge that their legal opinion on whether Enbridge or Mr Babirad owned the storage rights was incorrect.

Answer to OEB Question #3:

Enbridge's compensation offer to Mr Babirad for storage rights per acre per year was exactly equal to the amount Enbridge offered to other Crowland landowners.

But, Enbridge's storage rights compensation offer to Mr Babirad was not "just and equitable".

As was stated in the original Application, the Crowland landowners have not been receiving "just and equitable" storage rights compensation for at least 40 years. The historical and current storage rights lease agreements that were signed by the Crowland landowners were not the result of fair and robust negotiations between two informed parties looking out for their own self interests.

Enbridge was the price setter and the Crowland landowner was the price taker. The Crowland landowner can only blame themselves for blindly signing these leases but to pretend that the Crowland Pool's contracted lease rate somehow approximates what "just and equitable" compensation should be for the Crowland Pool landowners relative to the storage rights compensation received by the other storage reservoir landowners in Ontario is folly.

We are seeking treatment similar to the Lambton County Storage Association (LCSA) in RP-2000-0005.

The LCSA went to the Board under section 38(3) of the OEB Act. At that time the Board did not simply look at existing valid contracts in the relevant pools and declare that it would be "just and equitable" to merely match those existing valid contractual lease rates in order to determine "just and equitable" compensation for the LCSA.

Instead, the Board determined or ratified what "just and equitable" compensation should be for the LCSA and then the Board compared this amount to what landowners who were not entitled to an order under section 38(3) were receiving. If the amounts were materially different then the Board "expected" that Union would consider bringing the entire pool up to the new standard for "just and equitable" compensation.

From RP-2000-0005

> "*There is an expectation that landowner compensation in a particular pool will be uniform in accordance with principles enunciated by the Board in the Bentpath Decision and elsewhere"*
>
> *"Accordingly, the Board expects that Union will consider extending to these applicants at the conclusion of the proceeding or, at another 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"*

RP-2000-0005 is the blueprint for EB-2014-0351. The OEB Act requires that the Board independently determine what "just and equitable" compensation should have been and is for the Crowland pool landowners. If the Board's determination of "just and equitable" compensation for the Crowland pool landowners entitled to an order under section 38(3) is materially different than what those Crowland landowners who are not entitled to an order under section 38(3) are receiving then the Board could "expect" that Enbridge would consider extending an offer which is equivalent to the compensation determined by the Board to those Crowland landowners who are not entitled to an order under section 38(3).

Indeed, this is exactly the safeguard mechanism that the Crozier Report referred to when addressing the Ontario Federation of Agriculture's concerns of the *"inequality of bargaining positions as between the landowner and the company concerned."*

Quoting from the Crozier Report:

> *"Secondly, in those matters dealt with by the Board fair and reasonable consideration is assured for the representations of all interested parties, none of whom is denied an opportunity to present his case."*

If the Board simply looked at existing valid contracted lease rates within the Crowland pool and declared that since the Crowland landowners signed these contracts then they must represent “just and equitable” compensation it would violate one of the fundamental safeguards for landowners in the OEB Act.

Whether Enbridge’s storage rights compensation offer to Mr Babirad is equitable with the amount Enbridge offered to other Crowland landowners is not the point. The question before the Board is whether Enbridge’s storage rights compensation offer to Mr Babirad represents “just and equitable” compensation within the context of the Ontario natural gas storage industry’s current practices and principles regarding landowner storage rights compensation.