

Babirad Reply Submission

Ontario's Natural Gas Storage Reservoirs

	Storage Reservoir Name	Capacity mmcf/DSA acre	Deliverability mmcf/day
1	Payne Reef Pool	32.2	337
2	Dow Moore 3-21-XII Pool	19.8	285
3	Waubuno Pool	14.9	130
4	Sarnia 1-8-A Pool (block a)	11.7	70
5	Wilkesport Pool	10.9	100
6	Dawn 59-85 Pool	10.6	75
7	Seckerton-Seckerton North Pool	10.4	120
8	Corunna Pool	9.8	50
9	Dawn 156 Pool	9.4	371
10	Ladysmith Pool	9.3	97
11	Oil Springs East Pool	9.2	62
12	Terminus Pool	8.9	147
13	Kimball-Colinville Pool	7.2	635
14	Rosedale Pool	6.9	40
15	Sarnia 2-11-VIII Pool (airport)	6.7	159
16	Bentpath Pool	6.4	67
17	Bickford Pool	6.3	286
18	Coveny Pool	5.8	54
19	Dawn 1-27-VI Pool (Bentpath east)	5.6	71
20	Dawn 47-49 Pool	5.5	59
21	Enniskillen 28 Pool	4.9	50
22	Chatham 7-17-XII Pool	4.4	15
23	Oil City Pool	4.4	26
24	Dawn 167 Pool	4.1	57
25	Sombra 7-A-x1 (st Clair)	3.6	55
26	Sarnia 5-3-II Pool (bluwater)	3.6	27
27	Mandaumin Pool	3.4	63
28	Tipperary North	2.9	45
29	Dawn 7-28-V Pool (Booth Creek)	2.8	28
30	Tipperary South	2.7	45
31	Sombra Pool	2.7	35
32	Edys Mills Pool	2.6	26
33	Sombra 2-23-XII Pool (Black creek)	2.1	14
34	Sombra 8-6-xv (heritage)	1.7	50
35	Crowland Storage	0.2	35

Source of data is OGSR Library

Fact #1

Mr Babirad has not received any compensation from Enbridge for his property's storage rights that were expropriated from 1965 to present.

Fact #2

Mr Babirad sold his property's mineral estate to Enbridge for \$800. The \$800 represents compensation to Mr Babirad for the conveyance of the property's mineral estate to Enbridge.

The intent of the "Indenture" is what is written on the "Indenture".

It would have been illogical for Enbridge to conclude that it had secured the storage rights to Mr Babirad's property by signing the 1965 "Indenture" since, based on input from Enbridge (Consumers Gas) and other storage operators, the 1964 Crozier Report explicitly recommended,

"The Board recommends that there be a requirement that, where storage rights are included in a production lease, the caption include, in bold type, reference to storage rights, and clauses dealing with storage be separated from those dealing with production."

Fact #3

Under Common Law, when a property is severed into a surface estate and a mineral estate, the pore space rights reside with the surface owner. Unless the landowner has explicitly sold the rights to an asset of the property then the asset belongs to the landowner. The House of Lords reaffirmed this position in *Bocardo SA v Star Energy UK Onshore Ltd*.

Barry Barton's chapter "Property Rights in Underground Resources" in *The Law of Energy Underground* (Oxford 2014) concludes that, under Common Law, the storage rights belong to the surface owner in situations where the mineral estate has been separated from the surface estate.

Enbridge questioned whether Barton's work is consistent with the Canadian legal commentary. According to Enbridge submission point #37,

"The paper is the expression of the opinion of a particular author and his opinion clearly is not consistent with the Canadian legal commentary discussed above."

Most of the Canadian legal commentary that Enbridge referenced was provided by Nigel Bankes et al. Nigel Bankes is a Professor and Chair of Natural Resources Law at the University of Calgary. Mr Babirad asked Mr Bankes if he could comment on this topic. The following is Nigel Bankes' reply,

Dear Paul,

You have asked me to comment on Barry Barton's views on the ownership of storage rights in the common law.

Barton is a well respected academic not only in his home New Zealand but also in Canada where he worked for many years. He is, as you probably know, the author of the standard text on mining law in Canada.

His essay in the recent Zillman et al volume, Energy Underground, OUP, 2014 is a well researched contribution which is fully supported by UKSC decision in Star Weald. I agree with his overall conclusions but note that at least some Canadian jurisdictions have legislated to interfere with the default presumptions of the common law. I commented on Star Weald when it came out in 2010 and suggested that the decision should cause us to re-consider any assumption that the mineral owner owns the storage rights. See here <http://ablawg.ca/2010/08/12/the-supreme-court-of-the-united-kingdom-fka-the-house-of-lords-decides-an-oil-and-gas-case/>

I confirm that there is no contractual relationship between us and that you have not retained me to provide legal services.

*Nigel Bankes
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Fact #4

Why the delay of almost 50 years?

OEB Act Section 38(2)

Right to compensation

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

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

Enbridge was obligated by the OEB Act to provide Mr Babirad with "... just and equitable compensation in respect of the right to store gas".

In June 1965, Consumers Gas abruptly ended storage rights negotiations with Mr Babirad.

From 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.

If Consumers Gas/Enbridge had contacted Mr Babirad at any time during the period from June 1965 to June 2013 to investigate the absence of compensation payments to Mr Babirad similar to what Mr Chupa did in 2013 then this issue would have been resolved a long time ago.

According to Enbridge submission point #41,

“There was no reason for Enbridge to contact Mr Babirad about storage compensation during this period because a lump sum payment was made to acquire rights in respect of the 42 Acre Parcel...”

Clearly, at the time, it was Enbridge’s legal opinion that it had secured the storage rights of Mr Babirad’s property by signing the “Indenture”.

Enbridge’s legal opinion was incorrect and resulted in the nearly 50 year delay before an application was made to the Board in respect of storage compensation.

Mr Babirad cannot be held accountable because Enbridge neglected and ignored their obligation under the OEB Act to make just and equitable compensation to the owners of the right to store gas based on a flawed legal opinion.

Fact #5

EB-2014-0351 has never been about debating the relative merits of the Crowland Pool vs the rest of Ontario’s storage reservoirs. The Crowland pool is clearly the least attractive pool based on the metric that the Crozier Report cited as being by far the most important (mmcf/DSA acre). Mr Babirad acknowledged this fact repeatedly in the Lambton vs Crowland Submission.

Fact #6

EB-2014-0351 has always been about the Crowland pool landowners receiving “just and equitable” treatment relative to Ontario’s other storage reservoir landowners with respect to the application of the Ontario natural gas storage industry’s current principles on landowner storage compensation.

The OEB Act requires that these principles must be applied **equally and uniformly** across **all** of Ontario’s storage reservoirs.

Fact #7

The performance differences between a pinnacle reef formation pool and a lenticular formation pool are succinctly captured by the productivity metric (mmcf/DSA acre)

From the Crozier Report,

“The formula to be established must therefore represent the usefulness of the storage reservoir in terms of the capacity to hold gas in the formation and at the same time must be applied on an equal basis to all the acres in the designated area. To meet these requirements, the Board has calculated the capacity of each designated pool to abandonment pressure and has divided this figure by the number of productive acres in the pool, to arrive at the capacity per acre of participating area. This establishes relative values of all pools for storage purposes.”

The Crozier Report highlighted that by determining the (mmcf/DSA acre) metric for each respective pool one could establish relative values of **ALL** pools (both pinnacle reef and lenticular) for storage purposes.

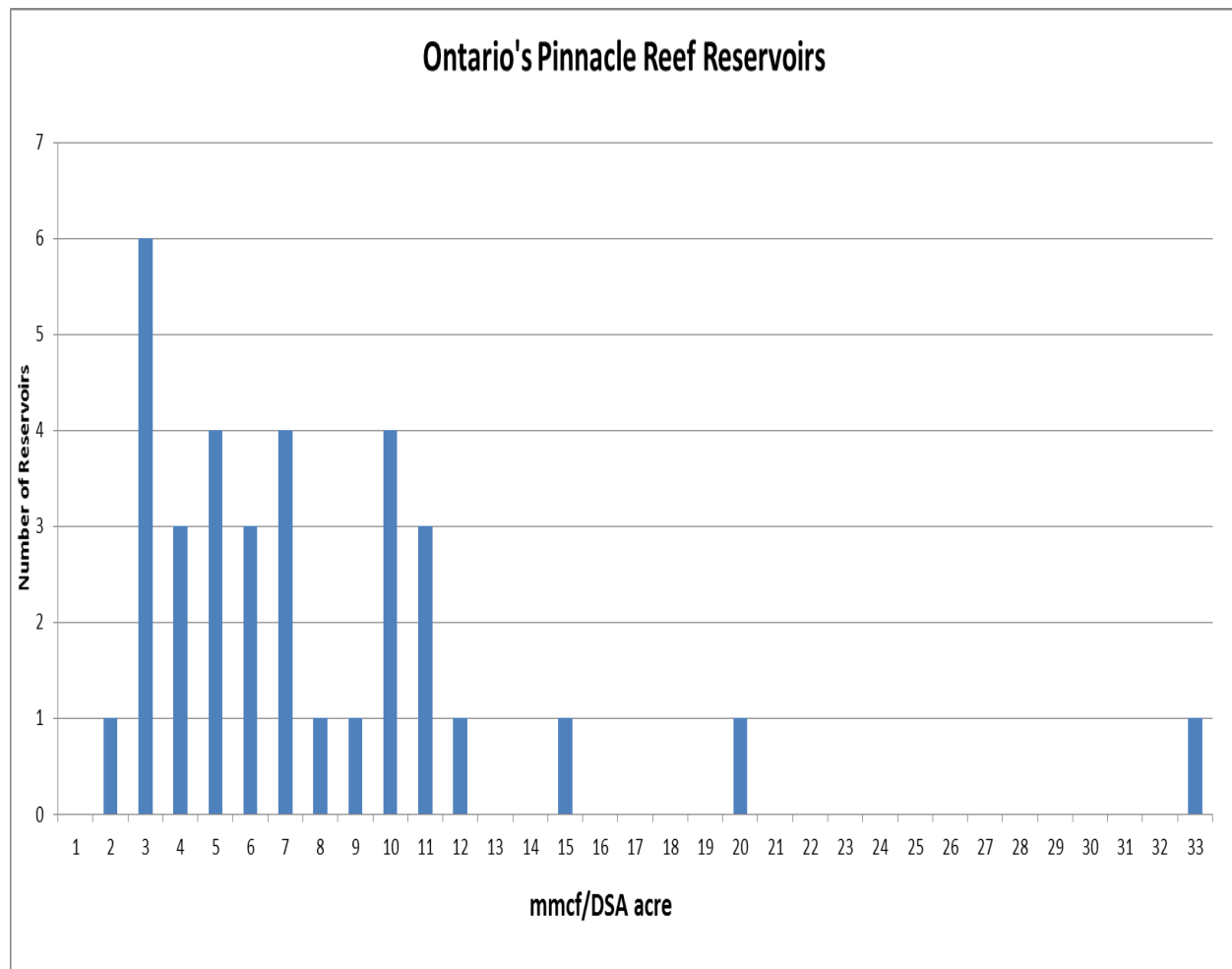
The critical storage performance metric of (mmcf/DSA acre) is fungible across both pinnacle reef and lenticular formations. That is, if two storage reservoirs (either pinnacle reef or lenticular) have the same (mmcf/DSA acres) attribute then they are interchangeable or have similar quality from a performance standpoint.

The key performance data on a given storage reservoir is not the geologic name given to the pool's formation but instead that pool's attributes as it relates to performance (ie mmcf/DSA acres, deliverability etc).

To prejudge a storage reservoir solely based on its geologic formation name is discriminatory.

Fact #8

Ontario's storage reservoirs that are pinnacle reef pools are **not** homogeneous.



For example, there are 6 pinnacle reef reservoirs in Ontario whose (mmcf/DSA acre) attribute lies between 2 and 3.

The mean of all of Ontario's pinnacle reef pools is 7.5 mmcf/DSA acre.

The standard deviation of all of Ontario's pinnacle reef pools is 5.9 mmcf/DSA acre

From the Crozier Report,

"... and is further demonstrated by the wide range of "capacities per participating acre" indicated in Appendix 6."

It is evident from the data presented above as well as from the Crozier Report that any attempt to characterize all of Ontario's pinnacle reef pools as one monolithic group, sharing similar performance characteristics, is blatantly false.

Fact #9

Point #23 of Enbridge's summation submission states,

"On the issue of how the Board should determine just and equitable compensation, the following are relevant considerations for the Board:

- (i) The compensation agreed by other Crowland Pool landowners.*
- (ii) Assessment of gas reservoir performance; and*
- (iii) The expert assessment of compensation carried out by Elenchus"*

Enbridge's considerations (ii) and (iii) require that Principal #6 of the Crozier Report be applied to the Crowland Pool in order to determine just and equitable compensation.

Principles for Ontario Landowner Storage Compensation

How does Ontario's natural gas storage industry, under OEB oversight, determine storage lease compensation for all the different landowners when such diversity related to capacity per acre and deliverability exists across all of the different pools?

OEB Act Section 38(2),

Right to compensation

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

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

"Just and equitable compensation". This is the foundational principle established within the OEB Act to protect landowners. It is the standard that must be met by the Board when it is required by the Act to determine landowners' storage rights compensation.

The Oxford Dictionary offers the following definitions,

Just -- *based on or behaving according to what is morally right or fair.*

Equitable -- *dealing fairly and equally with everyone.*

The Crozier Report offered 9 core principals respecting gas storage payments in Ontario. We highlight the two principles that are critical to EB-2014-0351.

Principal #6 of the Crozier Report,

STORAGE RENTAL PAYMENTS SHOULD BE BASED UPON THE CAPACITY AND PERFORMANCE RATING OF THE STORAGE RESERVOIR.

Principal # 8 of the Crozier Report,

IN THE DETERMINATION OF STORAGE RENTAL PAYMENTS, ACCOUNT SHOULD BE TAKEN OF THE USE AND USEFULNESS OF STORAGE.

Enbridge Proposals

The problem with abandoning core principles and adopting an ad hoc stance towards landowner storage rights compensation in Ontario is that it invariably leads to contradictions, unintended conclusions, unfair outcomes and discriminatory practices.

The following are excerpts from Enbridge's evidence/answers submissions,

"Elenchus is of the view that the principles established in the Crozier Report are still valid and result in just and equitable compensation for storage leaseholders...."

"The Crozier Report referred to a range of compensation rates for pinnacle reef pools, but it has become apparent since the time of the Crozier Report that a range of rates for Enbridge's Lambton area pinnacle reef pools is not appropriate, because the Lambton area pools are operated as an integrated system."

According to Enbridge, the principles established in the Crozier Report can either be appropriate or not appropriate depending upon which storage reservoir is being discussed.

"Just and equitable" treatment requires that a principle be applied to all of Ontario's storage reservoirs or to none of them.

What would Enbridge do with the Tipperary Reservoir? It is a pinnacle reef pool but it is not "integrated". Are the principles of the Crozier Report appropriate or not appropriate for the Tipperary Reservoir? Should the landowners of the Tipperary Reservoir receive a significantly smaller storage lease rate because their pool is not "integrated"?

Union Gas pays the landowners of the Tipperary Pool the benchmark Lambton rate despite the fact that the storage reservoir is not "integrated".

Improvised principles result in confusion, lack of clarity, inconsistency and unequal treatment.

Babirad Question #12 for Enbridge:

"Of all the storage reservoirs in Ontario, why does Enbridge require that only the Crowland pool satisfy Principle #6 of the Crozier Report?"

This question is of paramount importance to EB-2014-0351. The following is the concluding portion of Enbridge's reply,

"This evidence brings out that Enbridge's Lambton area storage pools share multiple characteristics and are operated as an integrated system, meaning that, for the Lambton area storage pools, it is the overall performance of the integrated system that is most important, not the performance of any one individual pool."

Under the Enbridge proposal, if the Crowland pool and the Dow Moore pool switched physical locations then, despite having a performance attribute of only 0.2 mmcf/DSA acre, the Crowland

pool's compensation would go from \$8.81/acre to \$136/acre because it is now part of the "integrated" system and the performance of any one individual pool does not matter.

Conversely, despite possessing an outstanding performance attribute of 19.8 mmcf/DSA acre, the Dow Moore pool's compensation would fall substantially because it is now isolated and only feeds into Enbridge's local distribution system.

According to the Enbridge proposal, the Crowland pool would receive substantially more storage rights compensation than the Dow Moore pool simply because their physical addresses have been switched – a strange and unintended result indeed!

What if the Dawn #3 and Zone reservoirs that are located in Lambton County were still operational? According to the Enbridge proposal, these lenticular pools would receive \$136/acre since they would be a part of the "integrated system". Two lenticular reservoirs with nearly identical performance attributes as the Crowland Pool would receive \$136/acre while the Crowland pool receives \$8.81/acre.

Under the Enbridge paradigm, the foundational principle of "just and equitable" treatment established within the OEB Act would be discarded and replaced by the Enbridge dictum -- if you are located near Lambton County ("integrated") then you are equal, regardless of each particular pools' attributes, and if you are outside of Lambton County then you should receive compensation that is substantially less.

"Just and equitable" is being replaced by "Lambton County and everyone else".

Based on its actions, Union Gas would reject the Enbridge proposal since the Tipperary Pool landowners receive the benchmark Lambton rate despite the fact that the storage reservoir is not "integrated".

The Enbridge proposal would discriminate against the landowners of a given pool based solely on that pool's physical location and such a principle would clearly violate the OEB Act's requirement of "just and equitable" treatment.

OEB Staff Proposals

First, a point of clarification from the OEB Staff Submission under the heading Compensation,

“The Crozier Report noted that the capacity of lenticular pools is much lower than the capacity of pinnacle reef pools and that using the same formula for storage rights compensation would not be appropriate...”

In 1964 the Crozier Report correctly observed that,

“...the capacity of lenticular pools is much lower than the capacity of pinnacle reef pools...”

At that time, the pinnacle reef pools in operation were the cream of the crop/low hanging fruit. Obviously, the industry chose to develop the most attractive pinnacle reef pools first. As the need and value of natural gas storage grew over time, the quality of the pinnacle reef pools being developed in Ontario deteriorated significantly. The average quality of Ontario’s pinnacle reef storage reservoir portfolio today is about 7.5 mmcf/DSA acre. In 1964, it was about 12.6 mmcf/DSA acre.

The following is a comparison of the Crowland Pool with the bottom 3 pinnacle reef pools in Ontario and the top three pinnacle reef pools in Ontario.

Storage Reservoir	Average mmcf/DSA acre
Crowland Pool	0.2
Heritage/Black Creek/Edy'd Mills	2.1
Payne Reef/Dow Moore/Waubuno	22.3

It is true that the capacity per acre for the Crowland Pool is “much lower” than the capacity per acre of all the other pinnacle reef pools in Ontario. It is also true that the capacity per acre of the bottom 3 pinnacle reef pools in Ontario is “much lower” than the capacity per acre of the top 3 pinnacle reef pool in Ontario. In fact, the bottom 3 pinnacle reef pools are 10X more productive than the Crowland Pool and the top 3 pinnacle reef pools are 10X more productive than the bottom 3 pinnacle reef pools.

The data shows that Ontario’s pinnacle reef pools are not homogeneous and that the capacity per acre of the more recent entrants into Ontario’s pinnacle reef portfolio is “much lower” than the capacity of the pinnacle reef pools that were analysed in 1964 by the Crozier Report.

When comparing lease rates between lenticular pools and pinnacle reef pools, the Crozier Report noted that,

“...the same formula for storage rights compensation would not be appropriate...”

This comment is made in two very different instances within the Crozier Report and requires context.

In one instance, the Crozier Report was arguing that the use of the same formula for both pinnacle reef and lenticular pools is inappropriate because it yields landowner compensation rates that are too **small** for lenticular pools.

The Crozier Report proposed a formula which used (mmcf/DSA acre) as the independent variable to calculate lease rates for Ontario's storage reservoirs. According to the Crozier Report, applying the formula to lenticular pools would be inappropriate since it would **understate** the amount of compensation that the landowners of lenticular pools should receive.

Assume for a moment that the Heritage, Black Creek and Edy's Mills pinnacle reef pools were operational in 1964. Given their relatively poor attributes (mmcf/DSA acre), it appears that the storage lease rates that would have been calculated for the landowners of the Heritage, Black Creek and Edy's Mills reservoirs, based on the formula in the Crozier Report, would have been close to, if not below, the industry minimum at the time of \$1/acre.

The second instance is related to a review of compensation agreements within the United States. The Crozier Report noted that some of the compensation formulas in the United States were based solely on acres with no regard for the volume underneath the ground.

Since in general, lenticular pools are shallow and flat and pinnacle reef pools are deep and narrow it is clear that a formula based solely on acres would not be appropriate if the intent was to relate landowner storage compensation to storage pool performance.

To reiterate, the Crozier Report stated that to use a formula based solely on DSA acres such as was used for the lenticular pools in the United States would not be an appropriate metric to determine compensation for Ontario's storage pools if, as the Crozier Report desired, landowner compensation was to be dependent on the performance attributes of each respective reservoir in Ontario.

However, as was pointed out in Fact #7, the Crozier Report endorsed the process of determining (mmcf/DSA acre) for all pools (both lenticular and pinnacle reef) in order to establish relative values for **all** pools (both lenticular and pinnacle reef) for storage purposes.

We agree completely with the Crozier Report. If Principle #6 of the Crozier Report is applied to all storage reservoirs in Ontario then the landowner's storage compensation should be based on the data input of (mmcf/DSA acre) and not the data input of (DSA acres).

This is exactly what was done in Appendix #1 of the Lambton vs Crowland submission. The array of lease rates attached to each of Ontario's storage reservoirs is exactly how the Crozier Report

anticipated that Principal #6 would be applied. Those landowners whose pools possess the highest performance attribute (mmcf/DSA) such as Payne Reef, Dow Moore and Waubuno would receive substantially more compensation per acre than those landowners whose pools possess the lowest performance attribute (mmcf/DSA acre) such as Crowland, Black Creek, Heritage and Edy's Mills.

Mr Babirad is in complete agreement with the Crowland pool receiving the lease rate of \$3/acre that is indicated in Appendix 1 of the Lambton vs Crowland Submission as long as all of Ontario's other storage reservoirs are subjected to Principal #6 of the Crozier Report as well.

When applied to all of Ontario's storage reservoirs equally and uniformly, Principle #6 of the Crozier Report provided all of Ontario's storage landowners with "just and equitable treatment as mandated by the OEB Act.

Another point of clarification is required from the OEB Staff Submission under the heading Compensation,

"Enbridge confirmed that for the historical period up to 2004, Enbridge's pinnacle reef pool landowners compared to Crowland Pool landowners receive, on average compensation about 16 times higher."

From Enbridge's answer submission,

"Furthermore, since the scale of the payments to Lambton/Kent and Crowland landowners is \$0 to \$160 and \$0-\$10, respectively, the ratio of the maximum amount of these two scales (ie, 160:10) represents the relationship between the payments. The historical relationship between these payments up to 2004 has therefore averaged approximately 16 to 1."

Enbridge did **not** confirm that for the historical period up to 2004, Enbridge' pinnacle reef pool landowners compared to Crowland Pool landowners receive, on average compensation about 16 times higher.

Instead, a consultant paid by Enbridge arbitrarily chose the maximum amount they wanted to use for the scale on a graph (160 and 10) and that arbitrary choice is now being used as evidence by OEB Staff.

The landowners of the Crowland Pool should feel fortunate that the authors of the Elenchus Report did not choose a maximum of \$300 for the scale of the graph representing Lambton/Kent payments and a maximum of \$8 for the scale of the graph representing Crowland payments or else the conclusion would have been that Enbridge's pinnacle reef pool landowners receive, on average, compensation 38 (300:8) times higher than Crowland Pool landowners.

Whatever happened to independent and rigorous analysis?

An independent and rigorous analysis by the Crozier Report noted that the Crowland Pool's compensation of \$1/acre appears to be "fair and reasonable". At the same time, the Crozier Report determined "fair and reasonable" lease rates for Enbridge's Kimball-Colinville Pool and Corunna Pool of \$5.19/acre and \$7.07/acre respectively.

The Crozier Report's recommended "fair and reasonable" ratio comparing lease payments from Enbridge's pinnacle reef pools and the Crowland pool is, on average 6:1

From OEB Staff Submission,

“Board staff submits because the Crowland Pool provides lower performance and higher operating cost per unit of storage, compared to pinnacle reef storage pools operated by Enbridge, it does not warrant the same quantum of compensation for storage rights as pinnacle reef landowners.”

Implicit in this Board Staff Submission is the assumption that all of Ontario’s pinnacle reef pools are homogeneous. As pointed out in Fact #8, this is in direct contradiction to the physical data and the findings within the Crozier Report.

OEB Staff Recommendations			
Storage Reservoir	Formation	mmcf/ DSA acre	Lease Rate \$
Crowland	Lenticular	0.2	8.81
Heritage	Pinnacle reef	1.7	136.00
Black Creek	Pinnacle reef	2.1	136.00
Edy's Mills	Pinnacle reef	2.6	136.00
...			
...			
Industry Average	-	7.4	136.00
...			
...			
Wilkesport	Pinnacle reef	10.9	136.00
Waubuno	Pinnacle reef	14.9	136.00
Dow Moore	Pinnacle reef	19.8	136.00
Payne Reef	Pinnacle reef	32.2	136.00

First we would like to reiterate to the Board that the data input of (mmcf/DSA acre) already takes into account the differences between a lenticular pool and a pinnacle reef pool.

The following conclusions can be drawn from the OEB Staff recommendations,

1. OEB Staff’s recommended landowner compensation is completely independent of each storage reservoirs’ **absolute** performance (mmcf/DSA acre)
2. OEB Staff’s recommended landowner compensation is completely independent of the **relative** performance of all of Ontario’s storage reservoirs.
3. OEB Staff recommends that Principle #6 of the Crozier Report should only apply to lenticular pools. Principle #6 must be applied to all of Ontario’s reservoirs or to none of them in order to adhere to the OEB Act.
4. Based on the fungible performance metric of (mmcf/DSA), it is **not** morally right or fair that the Heritage, Black Creek and Edy’s Mills pools (average of 2.1 mmcf/DSA acre) receive the same lease rate of \$136/acre as the Payne Reef, Dow Moore and Waubuno

pools (average 22.3 mmcf/DSA acre) while the Crowland Pool (0.2 mmcf/DSA acre) receives \$8.81/acre.

5. If the Crowland Pool still possessed the same performance attribute of 0.2 mmcf/DSA acre, but it was a pinnacle reef formation, then under the OEB Staff's recommended guidelines, the Crowland Pool would receive \$136 instead of \$8.81.
6. The OEB Staff's recommended compensation fits perfectly within the definition of discriminatory compensation based solely on name alone.

OEB Staff is recommending an industry principle that would create a two-tier landowner compensation system based solely on the geologic name of the pools' formation.

If the storage reservoir formation is pinnacle reef then it does not matter whether the pool has a performance attribute of 30 mmcf/DSA acre or 1 mmcf/DSA acre. The same lease rate of \$136/acre still applies. It is not the performance attributes of the individual pool that matters anymore, it is only the name that the pool's geologic formation was given.

The OEB Staff's recommendations creates a principle that would discriminate against the landowners of a given storage reservoir based solely on that reservoir's geologic formation name, not its merits.

The OEB Staff's recommended principle would clearly violate the OEB Act requirement of "just and equitable" treatment and is discriminatory.

The Ontario Natural Gas Storage Industry's De Facto Proposal

If Enbridge's and the Board's staff proposals do not meet the standards established within the OEB Act then what would? As is typical in these situations, natural market forces have already provided us with an answer.

No one could have imagined back in 1964 how important natural gas would become as a source of energy for Ontario's consumers and industry. Because of this, the Crozier Report's Principle #8 (the use and usefulness of storage) came to dominate any discussions or negotiations about storage rights compensation in Ontario.

It made little sense for Ontario's natural gas industry as a whole to carry out 35 separate negotiations with each of the respective pool's landowners regarding the use and usefulness of storage. Instead, it was in the storage operators, the landowners, the OEB and the public's interest to adopt a collective bargaining model. One benchmark negotiation over the use and usefulness of storage would occur and that negotiated lease rate would be adopted by everyone in the industry.

The collective bargaining model was embraced by Ontario's natural gas storage industry, under OEB oversight, circa 1990 when the Lambton County Storage Association (LCSA) collectively negotiated a benchmark agreement with Union Gas.

This conclusion is corroborated by the Elenchus Report,

"Elenchus understands that, especially over the last number of years, Union has played a lead role in negotiating settlement agreements for storage related lease payments with its landowners. Enbridge has for all intents and purposes adopted these negotiated amounts and used them as the basis to compensate its gas storage leaseholders for all leaseholders except the Crowland leaseholders."

The Crozier Report's Principle #6 could still have been maintained under the collective bargaining model. The benchmark Lambton negotiation could have established total province wide landowner storage compensation. The total compensation pie could then have been allocated to each respective pool based on Principle #6 of the Crozier Report. Appendix #1 of the Lambton vs Crowland Submission illustrates what lease rates would have approximately looked like if this had occurred.

Ontario's natural gas storage industry, under OEB oversight, did not choose this path. Instead, in recognition of how important and dominant Principle #8 had become, as well as, in the interest of harmony amongst the different pool's landowners who were now negotiating as a united front with Union Gas, Principle #6 of the Crozier Report was no longer recognized or enforced and was implicitly extinguished by the industry.

By discarding Principle #6 of the Crozier Report, Ontario's natural gas storage industry, under OEB oversight, implicitly embraced a new principle which possessed great clarity and simplicity.

Every acre of land within an OEB designated storage area should receive the benchmark Lambton negotiated rate.

For **all** of Ontario's storage reservoirs, landowner storage lease compensation is independent of each of the respective pool's performance attributes.

Whether Enbridge or OEB staff are willing to acknowledge this reality or not, that **is** the model that Ontario's natural gas storage industry has been following since circa 1990.

It is not about being a part of an "integrated" system or being located in Lambton County. It is also not about making some false assumptions (ie all pinnacle reef pools are homogeneous) and then creating a hastily improvised, ad hoc two-tier landowner compensation system that is fundamentally discriminatory.

Instead, it is the realization that Ontario's natural gas storage industry and the public interest is best served by the collective bargaining model even though it imposes inequity on the higher quality pools (Payne Reef, Dow Moore, Waubuno, Wilkesport etc) relative to the lower quality pools (Crowland, Black Creek, Heritage, Edy's Mills etc).

Throughout history the benefit of being able to bargain collectively has always come at the cost of setting aside the relative productivity attributes of all the members of the collective bargaining unit.

Conclusions

1. The Crozier Report, under the guidelines of Principle #6, established a “fair and reasonable” lease rate compensation ratio between Enbridge’s pinnacle reef pools and the Crowland Pool of 6:1
2. Under OEB oversight, Ontario’s natural gas storage industry adopted a collective bargaining model. This occurred circa 1990 when the Lambton County Storage Association (LCSA) reached a collective bargaining agreement with Union Gas. As a consequence, from 1990 onward, Principle #6 of the Crozier Report was no longer recognized or enforced by the industry and has been rescinded. Landowner storage compensation in Ontario became independent of each particular storage reservoir’s performance attributes.
3. To apply the discarded Principle #6 of the Crozier Report only to the Crowland Pool would violate the OEB Act’s requirement of “just and equitable” treatment and would be discriminatory.
4. The Elenchus Report’s recommendations are all based on the application of Principle #6 from the Crozier Report to the Crowland Pool. Since Principle #6 from the Crozier Report has been rescinded by Ontario’s natural gas storage industry, all of the Elenchus Report’s recommendations are invalid.
5. The Ontario natural gas storage industry’s de facto principle of “Every acre of land in an OEB designated storage area receives the Lambton benchmark rate independent of the reservoir’s performance attributes” is entirely consistent with the industry’s decision, under OEB oversight, to adopt the collective bargaining model circa 1990.
6. The Ontario natural gas storage industry’s de facto principle should apply equally and uniformly to all of Ontario’s storage reservoirs, including the Crowland Pool, in order to adhere to the OEB Act’s requirement of “just and equitable” treatment.
7. Compensation payable to Mr Babirad should follow the methodology presented in Appendix 3 of the Lambton vs Crowland Submission. Historical yearly cashflows should be rolled forward at the 1 year Treasury bill rate plus a credit spread of 1%. The use of a Treasury rate plus a corporate credit spread to roll forward past cashflows to the present is common practice within the financial community.
8. From 1965 - 1990, ie the timeframe that Principle #6 of the Crozier Report was recognized and enforced, the yearly compensation payment should be based on the Crozier Report’s determination of the “fair and reasonable” lease rate compensation ratio of 6:1 between Enbridge’s pinnacle reef pools and the Crowland Pool.
9. From 1990 – 2015, ie the timeframe that Principle #6 of the Crozier Report was not recognized or enforced and had been rescinded, the yearly compensation payment should be based on the collectively bargained benchmark Lambton rate.