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BY EMAIL and RESS

February 18, 2016
Our File: CO-2015-0102

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2015-0334 – Babirad Motion to Review – Submissions

We are counsel to Jim Babirad. Pursuant to the *Notice of Motion and Review and Vary, and Procedural Order No. 1*, please find enclosed the Written Submissions and a Book of Authorities of Jim Babirad. .

Yours very truly,
Jay Shepherd P.C.

Original signed by

Mark Rubenstein

cc: P. Babirad (by email)
Enbridge Gas Distribution Inc. (by email)

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ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an Application by Jim Babirad under section 38(3) of the *Ontario Energy Board Act, 1998* for an Order of the Board determining the quantum of compensation that Jim Babirad is entitled to receive from Enbridge Gas Distribution Inc.

AND IN THE MATTER OF Rule 42 of the Rules of *Practice and Procedure of the Ontario Energy Board*.

WRITTEN SUBMISSIONS OF JIM BABIRAD

A. OVERVIEW

1. Jim Babirad brings this motion to review the Ontario Energy Board's ("the Board") Decision and Order dated October 29, 2015 in EB-2014-0351 (the "Decision") in the application for compensation under section 38(3) of the *Ontario Energy Board Act* ("*OEB Act*"), payable by Enbridge Gas Distribution ("Enbridge") to him, for storage of gas under his property. In the Decision, while ordering compensation payable annually on a going forward basis, the Board did not order, let alone mention, the request for compensation owed to him since Enbridge (then Consumers' Gas) was granted the right by the Board to storage of gas on his property in 1965. The Board likely did so only by inadvertence, but regardless, it is an error that goes to the correctness of the Decision. The Board is required to consider this material issue, determine the just and equitable compensation for this past period of time, and provide reasons for it.

B. BACKGROUND

2. On November 12, 2014, Paul Babirad filed an application on behalf of his father, Jim Babirad, by way of letter to the Board, seeking an order determining the compensation payable by Enbridge Gas Distribution ("Enbridge") under section 38(3) of the *OEB Act*.¹

¹ Application by Paul Babirad on behalf of Jim Babirad, November 12 2014

3. Pursuant to the *Notice of Application and Procedural Order No.1*, the Board provided parties with an opportunity to file evidence, interrogatories, and make written argument. The Board also deemed Jim Babirad eligible for an award of costs pursuant to the *Practice Direction on Cost Awards*.² The Board issued its Decision on October 29, 2015 and this Motion to Review was filed on November 18, 2015.

Facts

4. Jim Babirad is the owner of property under which Enbridge operates a natural gas storage pool, pursuant to an order of the Board made in 1965.³ The pool is part of the Crowland gas storage pool.⁴

5. Before filing the application, Enbridge and Jim Babirad attempted to negotiate a resolution in 2013, but no agreement was reached.⁵

6. Jim Babirad's position was that he was eligible for compensation under section 38(3) of the *OEB Act* as he never had a storage compensation agreement with Enbridge (or its predecessor, Consumers' Gas). While there was a signed indenture in 1965 granting Consumers' Gas a fee simple in "all mines, minerals, and mining rights and right to work the same in, under or upon" in return for a lump sum payment of \$800, it did not include storage rights, only the mineral rights.⁶ Jim Babirad provided significant arguments for why the compensation for those mineral rights did not include compensation for storage rights, including the plain wording of the indenture.⁷ Enbridge disagreed and filed its own evidence and argument opposing compensation.

7. Regarding the amount of compensation owed, Jim Babirad sought an annual rate per acre comparable to that awarded by the Board previously to pinnacle reef landowners such as those in the Lambton proceeding (RP-2000-0005) (the "Lambton Rate").⁸ His position was that the amount that has been paid to other Crowland landowners was neither fair nor equitable and that

² Letter from the Registrar, February 13 2015

³ *Decision and Order* (EB-2014-0351), October 29 2015 ["*Decision*"] at p.1

⁴ *Decision*, at p 4

⁵ *Decision*, at p.7

⁶ Application by Paul Babirad on behalf of Jim Babirad, November 12 2014, Attachment

⁷ For example, Babirad Submission, 'Who owns the Pore Space? Surface Estate vs Mineral Estate', February 4 2015

⁸ *Decision* at p.7. Application Submission 'Lambton vs Crowland', January 29 2015 (See Appendix A)

the higher Lambton Rate should be paid. Based on the proposed rate, Jim Babirad filed a proposed methodology to determine the total compensation payable from 1965-2015.⁹ An attached spreadsheet was included as an Appendix showing the detailed calculations.¹⁰

8. Enbridge disagreed that the Lambton Rate should be used, and filed an expert report by Elenchus Research Associates (the “Elenchus Report”) that the rate should be \$8.81/acre in 2015 as opposed to the rate of \$134/acre sought.¹¹ Enbridge also filed evidence regarding what other landowners had been paid from 1965 to 2015 for entering into storage leases previously.¹²

Decision

9. In the Decision, the Board stated that Jim Babirad did not have a storage rights agreement with Enbridge.¹³ It ordered compensation to be paid for 2015 and onwards even though it did not appear to make any specific findings on the scope of the indenture, on which both parties had made considerable submissions.¹⁴

10. While it ordered compensation, the Board did not agree with Jim Babirad that the proposed annual rate should be set at the Lambton rate. In its view, while capacity and deliverability are relevant in determining the performance of a pool for compensation purposes, there were factors such as operating costs, proximity to a compressor and transmission, and ease of access to gas markets that would warrant a lower compensation rate.¹⁵ The Board ordered Enbridge to pay Jim Babirad the rate of \$8.81 per acre for 2015, consistent with the Elenchus Report findings which it found were fair and reasonable, to be adjusted periodically going

⁹ Application Submission ‘Lambton vs Crowland’, January 29 2014 at p.3 (See Appendix A): “The methodology chosen was to grow the most recent benchmark price at the rate of consumer price inflation until a new benchmark price was negotiated. Payment amounts for each year were simply price for that year multiplied by outstanding acres. These outstanding payments were then assumed to be rolled forward at the 1 year Treasury bill rate plus a credit spread of 1%. The use of the Treasury rate plus a corporate credit spread to either discount future cashflows to the present or to roll forward past cashflows to the present is common practice within the financial industry”.

¹⁰ Application Submission ‘Lambton vs Crowland’, January 29 2015, Appendix C (See Appendix A)

¹¹ Elenchus Research Associates, *An Assessment of Reasonable Compensation Amounts to the Enbridge Gas Distribution Inc Crowland Gas Storage Leaseholders*, February 26 2015 [“Elenchus Report”] (Tab X to the Enbridge’s Responding Material, dated February 27, 2015)

¹² Enbridge’s Responding Material at p.18-21

¹³ *Decision* at p.7

¹⁴ *Decision* at p.8,10

¹⁵ *Decision* at p.8

forward by the same percentage increase at the same time as Enbridge adjusts payment to all landowners in all its storage pools.¹⁶ Jim Babirad does not challenge this aspect of the Decision.

11. The Decision makes no findings, let alone any reference, to the request for compensation for the period before 2015. It is this aspect of the Decision where review and variance is sought.

C. ARGUMENT

Threshold Test Has Been Met

12. Pursuant to Rule 43.01 of the Board's *Rules of Practice and Procedure*, the Board conducts a threshold inquiry before conducting any review on the merits.¹⁷

13. The threshold test was articulated by the Board in the Natural Gas Electricity Interface Review ("NGEIR") motion to review decision.¹⁸ The Board stated that the purpose of the threshold test is to determine whether the grounds relied upon by the moving party raise a question as to the correctness of the decision, and whether there is enough substance to the issues raised, that the review based on those issues could result in the varying, cancelling or suspension of that decision. There must be an "identifiable error", as a motion to review "is not an opportunity for a party to reargue the case".¹⁹

14. This motion does not seek to re-argue the appropriate level of compensation payable. It only seeks for the Board to review and vary its Decision so as to require the Board to consider an issue, which it appears it may not have done originally, and make the appropriate findings based on the evidence and the law, and ensure they are consistent with its other findings in the Decision. In *NGEIR*, the Board stated that:

"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

¹⁶ *Decision* at p.1, 10

¹⁷ Ontario Energy Board, *Rules of Practices and Procedure*, Rule 43.01

¹⁸ *Decision with Reasons, Motion to Review Natural Gas Electricity Interface Review Decision* (EB-2006-0322/338/340, May 22 2007 ["NGEIR"]) at p.16-18

¹⁹ *NGEIR* at p.18

similar nature. It is not enough to argue that conflicting evidence should have been interpreted differently [emphasis added].²⁰

15. The Board has also stated that the grounds listed in Rule 42.01(a) are not exhaustive, and an error of law is a proper ground for review.²¹

16. This motion satisfies the threshold test. In the Decision, the Board failed to address a material issue: compensation owed for use of the applicant's property for gas storage between 1965 and 2014. This is the exact type of error that raises a question of the correctness of the decision. It is also an error of law as the Decision provides insufficient reasons.

17. Further, by not ordering past compensation, the Board made inconsistent findings, which also raises a question of the correctness of the Decision. On the one hand, the Board found that Mr. Babirad had no storage agreement and so was eligible to receive compensation, yet it made no order for compensation for the period since the original storage order was made in 1965.

18. Either he was eligible for compensation or he was not. This is also an error of law as it is inconsistent with the compensation scheme under section 38 of the *OEB Act* which provides for no temporal or other limitations period for the payment of just and reasonable compensation.

19. The errors are identifiable, and a review could result in the varying of the Decision by concluding that based on the evidence, argument, and the law, Jim Babirad should receive compensation by Enbridge for the period of 1965-2014.

Compensation Between 1965 and 2014 Is Owed

20. Jim Babirad sought compensation under the *OEB Act*, not just on a going-forward basis, but for the period starting on the date when Enbridge received a Board order to store gas under the property. This was his right, since there was no storage compensation agreement in place.

²⁰ *NGEIR* at p.17-18

²¹ *NGEIR* at p.14. *Decision and Order on Notice of Motion to Review and Vary* (EB-2014-0155), July 31 2014 at p.5: "The Board agrees with the submission of SEC that an error in law raises a material question as to the correctness of the Board's Decision. Such an error, could result in the varying of the Decision. As a result, the Board finds that the threshold test has been met in this case given the potential for an error in law".

21. The Board simply did not address this aspect of the claim. The reasons for the Decision are totally silent regarding this aspect of the application. By not ordering compensation for the period between 1965 and 2014, the Board has not granted this aspect of the requested relief. It has simply declined to consider and so it is an implicit denial. By not addressing the issue at all, it is not clear on what basis that denial was made. Regardless, Mr. Babirad submits that doing so is an error of law as it is inconsistent with section 38 of the *OEB Act*.

22. By not addressing the issue, the Board has also erred by not providing sufficient reasons, as it is required to do.

Statutory Scheme

23. Section 38 of the *OEB Act* contains a comprehensive scheme for a landowner's right to just and equitable compensation for the use of their property for gas storage.

24. It provides that, subject to an agreement with respect to compensation, a person authorized by an order of the Board under subsection to inject, store and remove gas from a designated area, "shall make to the owners of any store gas....in the area just and equitable compensation in respect to...the right to storage gas."²² If there is no agreement respecting compensation, the amount of just and equitable compensation shall be determined by the Board.²³

25. There is no temporal or other limitations period set out under section 38 of the *OEB Act* that would bar compensation. It does not require an application to be made to the Board by a certain date once a claim for compensation arises. It also does not require that compensation only be paid on a going-forward basis. To do so, as it would appear the Board did in this proceeding, would be an error in law. What is legally required of the Board, upon an application, is to determine a compensation amount that is just and equitable, to be paid to the owner by entities that have the right to store gas in a designated storage area pursuant to a

²² *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, s. 38(2)(i)

²³ *Ibid.* s. 38(3)

Board order. That Board order was made in 1965. Jim Babirad is an owner. Enbridge is storing gas under his property. The conditions were therefore satisfied, and a compensation amount must be established.

26. By providing an order that Enbridge must compensate Jim Babirad going forward, the Board recognized that he had a right to compensation under the *OEB Act*. Section 38(2) and (3) are clear that if there is no agreement on compensation, the Board shall order just and equitable compensation to the owner upon an application. If Jim Babirad did not have the right to compensation because of the previous lump sum payment in return for the indenture that amounted to a compensation agreement, as was alleged by Enbridge, then the Board did not have the authority to order compensation for any period of time. Once the Board determined that compensation was payable for any period, compensation was, in law, payable for the entire period. It would be inconsistent and an error of law to find otherwise.

27. If as a matter of law or policy, only future compensation can be ordered, a position that even Enbridge did not take in the original proceeding, then one would expect that the Board would be required to ensure compensation was set or agreed to at the same time it provides for an order authorizing a person to inject, store and remove gas from a designated area. No such requirement exists under the *OEB Act* and the Board has never made such a distinction before.

28. Even though the Board disagreed with Jim Babirad, and agreed with Enbridge regarding the annual rate per acre to be paid, it does not mean that he is not entitled to compensation for the use of his property for gas storage from 1965-2014. Consistent with its findings on the annual rate per acre which was based on the Elenchus Report, the Board should have considered the evidence filed regarding the appropriate methodology for past compensation, by simply applying the proposed annual rate per acre, with what had been previously paid per year to other Crowland Pool landowners (see p.15 of the Elenchus Report²⁴), and applying interest on those payments.²⁵ While the amount would be significantly less than what was originally sought, it is still a material amount to Jim Babirad.

²⁴ *Elenchus Report* at p.15 (Tab X to the Enbridge's Responding Materials, dated February 27, 2015) (See Appendix B)

Insufficient Reasons

29. The Board is required under the *Statutory Powers Procedure Act* to give reasons in writing of its decision.²⁶ The purpose of providing reasons is to ensure that the “the individual whose rights, privileges or interests are affected know why the decision was made and permit effective judicial review”.²⁷

30. The content and level of detail required in the Board’s reasons will differ depending on the context. As the Ontario Municipal Board commented, in a decision on an application for rehearing (a similar procedure to a motion to review):

It is a truism that a board's decision must have the requisite transparency, intelligibility, justification and sufficiency of reasons so that the parties can follow the trail of how the decision is reached (see *Clifford v. Ontario (Attorney General)*, 2009 ONCA 670 (Ont. C.A.), par.29 and 30). The degree of details required, however, varies. Often, it is governed by how pivotal the issues are and the extent they may shape the decision-making, and the relation to the legislative framework. In some cases, a pithy finding may suffice; in others, it may be woefully inadequate. Prolivity may not be called for in every hearing that is lengthy and the issues seemingly complex. However, for some short hearing events, fastidious attentiveness to details may be urgently needed. In short, context matters a great deal.²⁸

31. Not every argument is required to be addressed in a Board decision, but a material issue cannot be completely ignored. As has been said by various courts and tribunals, the Board’s reasons must show that it has “grappled” with the material issues before it.²⁹

32. The Decision does not meet that standard. It cannot be said to grapple with the issue of past compensation. Not only did it not address the evidence or arguments of the parties, or explain why none should be awarded, as required, but it did not even make a single reference to

²⁵ The proposed methodology of using 1 year Treasury bill rate plus a credit spread of 1%. This methodology is very similar to what Board Staff had proposed in *Proposal Paper: Interest Rates for Regulatory Accounts of Utilities* (EB-2006-0117)

²⁶ *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, s.17(1)

²⁷ *Clifford v. Ontario Municipal Employees Retirement System*, 2009 ONCA 67 at para. 29

²⁸ *Aurora 2C West Landowners Group v. Aurora (Town)*, [2012] O.M.B.D. No. 276 at para. 13

²⁹ See *R. v. R.E.M.*, [2008] 3 SCR 3 at para.43. *Clifford v. Ontario Municipal Employees Retirement System*, 2009 ONCA 670 at para 30. *Town of Richmond Hill v. Haulover Investments Ltd.*, 2012 ONSC 1111 at para 24. *Ravichandran v. Canada (Citizenship and Immigration)*, 2015 FC 665 at para 30. *Seguin and Wallace and Toronto Police Service*, 2016 ONCPC 2, para 29. *Dichmont v. Newfoundland and Labrador (Government Services and Lands)*, 2015 NLTD(G) 14 at para. 70. *Cesaroni Holdings Ltd. v. Markham (Town)*, [2011] O.M.B.D. No. 629 at para. 31

it. The Board provided no rationale for why Jim Babirad's right to compensation, from the period of the initial Board order in 1965 until the year of the Decision, was not granted. The Decision does not allow any effective review to ensure that whatever the Board's rationale could have been, it was factually and legally correct.

D. REMEDY

33. Jim Babirad seeks an order by the Board reviewing and varying the Decision in which it did not order compensation to be payable for the period of 1965 to 2014, and then making an order determining the appropriate amount of compensation due. The Board may do so by relying on the law, and evidence and arguments that were filed in the original proceeding EB-2014-0351 alone. It may be more helpful, though, to allow for a further round of submissions from parties on the issue of compensation for the period of 1965 to 2014. This is because, in the original proceeding, the application was filed by Jim Babirad's son Paul Babirad, who is neither a lawyer nor energy consultant, and so it may be useful to the Board for the issues on quantum, and the evidence to be presented to it in a more expert manner to help in its deliberations.

E. COSTS

34. Jim Babirad submits that he is eligible for an award of costs on this motion in accordance with section 3.07 of the *Practice Direction on Cost Awards* and requests that the Board order payment of his reasonably incurred costs in connection with his participation in this proceeding. Jim Babirad was found eligible for costs previously in the original proceeding.³⁰ It is submitted that Jim Babirad has participated responsibly in this proceeding and in bringing this motion, which was consistent with the Board's letter to Paul Babirad³¹ in response to his letters seeking clarification of the Decision.³²

ALL OF WHICH IS RESPECTFULLY SUBMITTED

³⁰ Letter from the Registrar, February 13 2015

³¹ Letter from Zora Crnokacki to Paul Babirad, November 13 2014

³² Emails from Paul Babirad to the Board, November 2 and November 5 2015

February 18, 2016

Original signed by

Mark Rubenstein
Counsel to Jim Babirad

A

Lambton vs Crowland

Approximately 35,000 acres of land in Ontario have been designated as a natural gas storage area by the Ontario Energy Board. Of this total, about 33,000 acres (94%) are currently being compensated based on the Lambton benchmark rate of \$134/acre. The remaining 2,000 acres (Crowland pool) receive \$6/acre. Why?

The OEB's Crozier report (1964) envisioned an industry practice of having a volume based formula for determining lease compensation rates.

"...the Board finds that the only fair and reasonable basis of payment for the storage of gas is one which is related to the capacity of the reservoir in terms of areal extent, volume and quality. This gives a true measure of the privilege granted by virtue of agreements made with owners of storage rights. Furthermore, such a basis is consistent with the trend in Ontario, as will be seen by examining the various agreements that have been reached by negotiations since 1942."

The Crozier report recommended that each given pool be assessed by its volume attributes and a unique compensation rate for that pool would apply. Lenticular pools like Crowland would be less attractive because they tend to be wide and shallow and hence should receive a smaller compensation lease rate.

However, for whatever reason, industry practice did not evolve the way the Crozier report predicted in 1964. Negotiated Lambton benchmark rates are a fixed rate per acre. The dollar amount does not vary with the market value of storage on a day to day, month to month or year to year basis. An acre of land receives \$134. It is two dimensional. It is not adjusted for volume, cycling, and proximity to market or any other natural gas storage productivity metric.

Appendix 1 attempts to illustrate what lease rates would look like in a world where volume matters. All 35 natural gas pools are rank ordered by mmcf/DSA acre. The Payne Reef pool is by far the most attractive and the Crowland pool is by far the least attractive. The lease rate/acre column adjusts each pool's lease rate to reflect its relative attractiveness by volume. Thus, Payne Reef landowners compensation would increase from \$134/acre to \$583/acre. Alternatively, Edy's Mills pool's (ranked #32) compensation would decrease from \$134/acre to \$46/acre. Of course, in the real world both Payne Reef and Edy's Mills landowners receive the same \$134/acre.

While it is clear that the Crowland pool's volume characteristics put it at the bottom of the list, pools such as Sombra Heritage (#34), Sombra Black Creek (#33) and Edy's Mills (#32) have volume/acre attributes closer to Crowland than Payne Reef. Yet these pools receive the same \$134/acre as Payne Reef while Crowland receives \$6/acre.

Enbridge is attempting to cherry pick the data by severely penalizing the poorest volume performer relative to the benchmark provincial compensation rate, but not rewarding the highest volume performer.

Appendix 2 ranks the 35 pools by their ability to "cycle". The column labeled Cycling shows how many times the entire volume of each individual pool can be turned over in a given 365 day period. For

example the Crowland pool can turn over its entire volume 43 times in a given year. Cycling is an important productivity metric that allows storage facilities to optimize services in order to take advantage of the marketplace's volatility. Based on this metric the Crowland pool is ranked #1.

One could go on forever choosing different metrics and then rank ordering all the pools to see how each stack up against one another. However it would be pointless since the negotiated Lambton benchmark rate is the de facto provincial landowner compensation rate. It is not dependent on the volume stored underneath the land or any other productivity measurement. Under the guiding principal of "fair and equitable" any acre within a designated storage area in Ontario should receive the Lambton benchmark rate.

So if volume or any other productivity metric do not account for the dramatic compensation rate difference that exists between Crowland and the rest of Ontario what does ?

The answer can be traced back to concerns raised by the Ontario Federation of Agriculture back in 1964.

The Board has given due consideration to a point continually raised by, or on behalf of, certain landowners who complain of the "inequality of bargaining positions as between the landowner and the company concerned." In its brief, the Ontario Federation of Agriculture contrasts the availability to the "Company" of financial and legal resources and of technical knowledge of the storage business with the "Farmers" lack of these advantages.

The Board is of the opinion that there are several factors which tend to make apparent inequality of position less significant than the above contention would indicate. In the first place, the landowners concerned live in a part of Ontario where negotiations between the oil and gas industry and landowners have been carried on for something like three generations and, with respect to gas storage matters, for over twenty years. The knowledge and experience thus gained is evident from the material put forward by the same people in briefs, at hearings and meetings and on other occasions when their views are presented.

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.

Lastly, and of great importance, is the strength to be found in the landowner's position as a prospective grantor of rights. Rights being sought by a would-be lessee can be withheld by the landowner by simply refusing to sign the proposed agreement.

OEB Crozier Report May 1964

Unlike the Lambton/Kent region, the Crowland Pool is isolated in an area of Ontario that does not have a rich history of negotiations occurring between the oil and gas industry and landowners. There were no network opportunities to casually compare and contrast what neighbors and fellow farmers were

receiving in other pools in and around the general geographic vicinity. Most landowners in the Crowland pool do not even know why they are receiving a lease rate from Enbridge let alone what the current industry standard is in Ontario. When a lease expired with a Crowland landowner Enbridge simply kept the compensation rate the same and asked the pore space rights owner to sign in order to extend the lease another 10-20 years.

Enbridge did not find it necessary to provide an update to the landowners of Crowland on what current industry practices were in the rest of Ontario. Without a doubt, if the Crowland pool were situated in the Lambton/Kent region then the landowners would currently be receiving around \$134.

There have been no hearings in front of the OEB related to compensation questions regarding the Crowland pool in the last 50 years. Fair and equitable consideration can only be assured by the OEB if the matter is brought to its attention.

Compensation

Appendix 3 provides a methodology to determine compensation payable. Under the column titled lease rate/acre there are 7 highlighted prices representing Lambton benchmark rates. These prices were the most complete set that we could obtain from a representative of Union Gas. The prices for all the remaining years had to be interpolated. The methodology chosen was to grow the most recent benchmark price at the rate of consumer price inflation until a new benchmark price was negotiated. Payment amounts for each year were simply price for that year multiplied by outstanding acres. These outstanding payments were then assumed to 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 either discount future cashflows to the present or to roll forward past cashflows to the present is common practice within the financial industry. The total amount owing is \$390,000

Appendix 1

Volume

| | Name | Year | Owner | DSA Acres | Working Capacity mmcf | mmcf/ DSA acre | Lease Rate/ acre \$ |
|----|------------------------------------|------|------------|--------------|-----------------------------|-------------------|---------------------------|
| 1 | Payne Reef Pool | 1957 | union | 769 | 24,734 | 32.2 | 583 |
| 2 | Dow Moore 3-21-XII Pool | 1988 | enbridge | 1,345 | 26,620 | 19.8 | 359 |
| 3 | Waubuno Pool | 1960 | union | 639 | 9,546 | 14.9 | 270 |
| 4 | Sarnia 1-8-A Pool (block a) | 1992 | union | 545 | 6,371 | 11.7 | 212 |
| 5 | Wilkesport Pool | 1978 | enbridge | 720 | 7,872 | 10.9 | 198 |
| 6 | Dawn 59-85 Pool | 1943 | union | 530 | 5,604 | 10.6 | 192 |
| 7 | Seckerton-Seckerton North Pool | 1963 | enbridge | 1,253 | 13,045 | 10.4 | 189 |
| 8 | Corunna Pool | 1963 | enbridge | 524 | 5,117 | 9.8 | 177 |
| 9 | Dawn 156 Pool | 1962 | union | 2,795 | 26,369 | 9.4 | 171 |
| 10 | Ladysmith Pool | 1999 | enbridge | 611 | 5,668 | 9.3 | 168 |
| 11 | Oil Springs East Pool | 1990 | union | 404 | 3,708 | 9.2 | 166 |
| 12 | Terminus Pool | 1975 | union | 1,249 | 11,054 | 8.9 | 160 |
| 13 | Kimball-Colinville Pool | 1963 | enbridge | 4,747 | 34,093 | 7.2 | 130 |
| 14 | Rosedale Pool | 1975 | union | 454 | 3,147 | 6.9 | 126 |
| 15 | Sarnia 2-11-VIII Pool (airport) | ? | market hub | 784 | 5,262 | 6.7 | 122 |
| 16 | Bentpath Pool | 1974 | union | 788 | 5,046 | 6.4 | 116 |
| 17 | Bickford Pool | 1972 | union | 3,305 | 20,935 | 6.3 | 115 |
| 18 | Coveny Pool | 1997 | enbridge | 752 | 4,361 | 5.8 | 105 |
| 19 | Dawn 1-27-VI Pool (Bentpath east) | 1999 | union | 844 | 4,718 | 5.6 | 101 |
| 20 | Dawn 47-49 Pool | 1942 | union | 839 | 4,630 | 5.5 | 100 |
| 21 | Enniskillen 28 Pool | 1989 | union | 720 | 3,500 | 4.9 | 88 |
| 22 | Chatham 7-17-XII Pool | 1998 | enbridge | 539 | 2,387 | 4.4 | 80 |
| 23 | Oil City Pool | 2000 | union | 391 | 1,723 | 4.4 | 80 |
| 24 | Dawn 167 Pool | 1976 | union | 1,137 | 4,679 | 4.1 | 75 |
| 25 | Sombra 7-A-x1 (st Clair) | 2007 | market hub | 306 | 1,116 | 3.6 | 66 |
| 26 | Sarnia 5-3-II Pool (bluwater) | 2000 | union | 557 | 1,995 | 3.6 | 65 |
| 27 | Mandaumin Pool | 2000 | union | 1,093 | 3,666 | 3.4 | 61 |
| 28 | Tipperary North | 2008 | tribute | 533 | 1,568 | 2.9 | 53 |
| 29 | Dawn 7-28-V Pool (Booth Creek) | 1999 | union | 648 | 1,840 | 2.8 | 51 |
| 30 | Tipperary South | 2008 | tribute | 533 | 1,437 | 2.7 | 49 |
| 31 | Sombra Pool | 1990 | union | 774 | 2,066 | 2.7 | 48 |
| 32 | Edys Mills Pool | 1993 | union | 947 | 2,426 | 2.6 | 46 |
| 33 | Sombra 2-23-XII Pool (Black creek) | 1997 | enbridge | 409 | 862 | 2.1 | 38 |
| 34 | Sombra 8-6-xv (heritage) | 2009 | union | 560 | 950 | 1.7 | 31 |
| 35 | Crowland Storage | 1962 | enbridge | 1,887 | 297 | 0.2 | 3 |

Total 34,929 258,412

Total Cost@\$134/acre 4,680,468

Average vol/acre 7.40 mmcf/acre

Appendix 2

Option Value

"Cycling"

| | | Working Capacity mmcf | Peak Day Deliverability mmcf/day | Cycling Working capacity turned over /365 days |
|-------|------------------------------------|-----------------------------|--|--|
| 1 | Crowland Storage | 297 | 35 | 43.1 |
| 2 | Sombra 8-6-xv (heritage) | 950 | 50 | 19.2 |
| 3 | Sombra 7-A-x1 (st Clair) | 1,116 | 55 | 18.0 |
| 4 | Tipperary South | 1,437 | 45 | 11.4 |
| 5 | Sarnia 2-11-VIII Pool (airport) | 5,262 | 159 | 11.0 |
| 6 | Tipperary North | 1,568 | 45 | 10.5 |
| 7 | Kimball-Colinville Pool | 34,093 | 635 | 6.8 |
| 8 | Mandaumin Pool | 3,666 | 63 | 6.3 |
| 9 | Ladysmith Pool | 5,668 | 97 | 6.2 |
| 10 | Sombra Pool | 2,066 | 35 | 6.2 |
| 11 | Oil Springs East Pool | 3,708 | 62 | 6.1 |
| 12 | Sombra 2-23-XII Pool (Black creek) | 862 | 14 | 5.9 |
| 13 | Dawn 7-28-V Pool (Booth Creek) | 1,840 | 28 | 5.6 |
| 14 | Oil City Pool | 1,723 | 26 | 5.5 |
| 15 | Dawn 1-27-VI Pool (Bentpath east) | 4,718 | 71 | 5.5 |
| 16 | Enniskillen 28 Pool | 3,500 | 50 | 5.2 |
| 17 | Dawn 156 Pool | 26,369 | 371 | 5.1 |
| 18 | Bickford Pool | 20,935 | 286 | 5.0 |
| 19 | Payne Reef Pool | 24,734 | 337 | 5.0 |
| 20 | Waubuno Pool | 9,546 | 130 | 5.0 |
| 21 | Sarnia 5-3-II Pool (bluwater) | 1,995 | 27 | 4.9 |
| 22 | Dawn 59-85 Pool | 5,604 | 75 | 4.9 |
| 23 | Terminus Pool | 11,054 | 147 | 4.9 |
| 24 | Bentpath Pool | 5,046 | 67 | 4.8 |
| 25 | Dawn 47-49 Pool | 4,630 | 59 | 4.7 |
| 26 | Rosedale Pool | 3,147 | 40 | 4.6 |
| 27 | Wilkesport Pool | 7,872 | 100 | 4.6 |
| 28 | Coveny Pool | 4,361 | 54 | 4.5 |
| 29 | Dawn 167 Pool | 4,679 | 57 | 4.4 |
| 30 | Sarnia 1-8-A Pool (block a) | 6,371 | 70 | 4.0 |
| 31 | Edys Mills Pool | 2,426 | 26 | 3.9 |
| 32 | Dow Moore 3-21-XII Pool | 26,620 | 285 | 3.9 |
| 33 | Corunna Pool | 5,117 | 50 | 3.6 |
| 34 | Seckerton-Seckerton North Pool | 13,045 | 120 | 3.4 |
| 35 | Chatham 7-17-XII Pool | 2,387 | 15 | 2.3 |
| Total | | 258,412 | 3,786 | |

Appendix 3

Compensation

| | |
|-------------------|-------------|
| | Total owing |
| No Interest | 114,388.28 |
| T-bill interest | 299,211.79 |
| 1 % Credit Spread | 389,925.92 |

| | | Acres | CPI | lease rate/acre | Payment | 1-Year T-bill | Outstanding Balance |
|----|------|-------|------|-----------------|----------|------------------|------------------------|
| 1 | 1965 | 42.0 | 16.8 | 7.00 | 294.00 | 4.01% | 294.00 |
| 2 | 1966 | 42.0 | 17.5 | 7.29 | 306.25 | 4.99% | 614.98 |
| 3 | 1967 | 42.0 | 18.1 | 9.00 | 378.00 | 4.92% | 1,029.82 |
| 4 | 1968 | 42.0 | 18.8 | 9.35 | 392.62 | 6.35% | 1,483.40 |
| 5 | 1969 | 42.0 | 19.7 | 9.80 | 411.41 | 6.71% | 2,003.84 |
| 6 | 1970 | 42.0 | 20.3 | 10.09 | 423.94 | 7.95% | 2,582.29 |
| 7 | 1971 | 42.0 | 20.9 | 10.39 | 436.48 | 5.05% | 3,249.88 |
| 8 | 1972 | 42.0 | 21.9 | 10.89 | 457.36 | 4.76% | 3,903.85 |
| 9 | 1973 | 42.0 | 23.6 | 11.73 | 492.86 | 5.48% | 4,621.58 |
| 10 | 1974 | 42.0 | 26.2 | 13.03 | 547.16 | 6.75% | 5,468.21 |
| 11 | 1975 | 42.0 | 29.0 | 14.42 | 605.64 | 6.16% | 6,497.64 |
| 12 | 1976 | 42.0 | 31.1 | 15.46 | 649.49 | 8.13% | 7,612.36 |
| 13 | 1977 | 42.0 | 33.6 | 16.71 | 701.70 | 7.57% | 9,009.07 |
| 14 | 1978 | 42.0 | 36.6 | 18.20 | 764.35 | 7.70% | 10,545.50 |
| 15 | 1979 | 42.0 | 40.0 | 19.89 | 835.36 | 10.80% | 12,298.32 |
| 16 | 1980 | 42.0 | 44.0 | 21.88 | 918.90 | 12.79% | 14,668.41 |
| 17 | 1981 | 42.0 | 49.5 | 24.61 | 1,033.76 | 13.06% | 17,724.95 |
| 18 | 1982 | 42.0 | 54.9 | 27.30 | 1,146.53 | 15.95% | 21,363.60 |
| 19 | 1983 | 42.0 | 58.1 | 28.89 | 1,213.36 | 10.28% | 26,198.09 |
| 20 | 1984 | 42.0 | 60.6 | 30.13 | 1,265.57 | 10.23% | 30,418.81 |
| 21 | 1985 | 42.0 | 63.0 | 31.33 | 1,315.69 | 10.27% | 35,150.53 |
| 22 | 1986 | 42.0 | 65.6 | 32.62 | 1,369.99 | 9.88% | 40,481.98 |
| 23 | 1987 | 42.0 | 68.5 | 34.06 | 1,430.55 | 7.85% | 46,316.98 |
| 24 | 1988 | 42.0 | 71.2 | 35.40 | 1,486.94 | 9.04% | 51,902.97 |
| 25 | 1989 | 42.0 | 74.8 | 37.19 | 1,562.12 | 10.58% | 58,676.15 |
| 26 | 1990 | 42.0 | 78.4 | 52.00 | 2,184.00 | 10.81% | 67,654.84 |
| 27 | 1991 | 42.0 | 82.8 | 54.92 | 2,306.57 | 10.09% | 77,951.45 |
| 28 | 1992 | 42.0 | 84.0 | 55.71 | 2,340.00 | 7.54% | 88,936.27 |
| 29 | 1993 | 42.0 | 85.6 | 56.78 | 2,384.57 | 7.09% | 98,916.00 |
| 30 | 1994 | 42.0 | 85.7 | 56.84 | 2,387.36 | 4.18% | 109,305.66 |
| 31 | 1995 | 42.0 | 87.6 | 58.10 | 2,440.29 | 8.85% | 117,407.98 |
| 32 | 1996 | 42.0 | 88.9 | 58.96 | 2,476.50 | 5.48% | 131,449.16 |
| 33 | 1997 | 42.0 | 90.4 | 59.96 | 2,518.29 | 4.28% | 142,485.35 |
| 34 | 1998 | 42.0 | 91.3 | 70.00 | 2,940.00 | 4.90% | 152,948.58 |

| | | | | | | | |
|----|------|------|-------|--------|----------|-------|------------|
| 35 | 1999 | 42.0 | 92.9 | 71.23 | 2,991.52 | 4.83% | 164,964.07 |
| 36 | 2000 | 42.0 | 95.4 | 73.14 | 3,072.03 | 6.04% | 177,653.50 |
| 37 | 2001 | 42.0 | 97.8 | 74.98 | 3,149.31 | 4.91% | 193,309.62 |
| 38 | 2002 | 42.0 | 100.0 | 76.67 | 3,220.15 | 3.33% | 207,954.37 |
| 39 | 2003 | 42.0 | 102.8 | 78.82 | 3,310.32 | 3.55% | 220,269.11 |
| 40 | 2004 | 42.0 | 104.7 | 92.50 | 3,885.00 | 2.71% | 234,176.36 |
| 41 | 2005 | 42.0 | 107.0 | 94.53 | 3,970.34 | 2.83% | 246,834.64 |
| 42 | 2006 | 42.0 | 109.1 | 96.39 | 4,048.27 | 3.83% | 260,336.68 |
| 43 | 2007 | 42.0 | 111.5 | 98.51 | 4,137.32 | 4.10% | 277,048.26 |
| 44 | 2008 | 42.0 | 114.1 | 100.80 | 4,233.80 | 3.22% | 295,411.52 |
| 45 | 2009 | 42.0 | 114.4 | 113.00 | 4,746.00 | 1.39% | 312,623.88 |
| 46 | 2010 | 42.0 | 116.5 | 115.07 | 4,833.12 | 1.21% | 324,928.71 |
| 47 | 2011 | 42.0 | 119.9 | 118.43 | 4,974.17 | 1.64% | 337,083.81 |
| 48 | 2012 | 42.0 | 121.7 | 120.21 | 5,048.85 | 1.03% | 351,031.67 |
| 49 | 2013 | 42.0 | 122.8 | 121.30 | 5,094.48 | 1.17% | 363,252.10 |
| 50 | 2014 | 42.0 | | 134.00 | 5,628.00 | 1.00% | 376,762.67 |
| 51 | 2015 | 42.0 | | 134.00 | 5,628.00 | 1.00% | 389,925.92 |

Total Payment = 114,388.28

B

Enbridge has periodically adjusted the annual payment to gas storage lease holders in the Crowland DSA from time to time since the reservoir was initially developed as illustrated in Figure 11. These Crowland gas storage lease payments have not been adjusted since 2004.

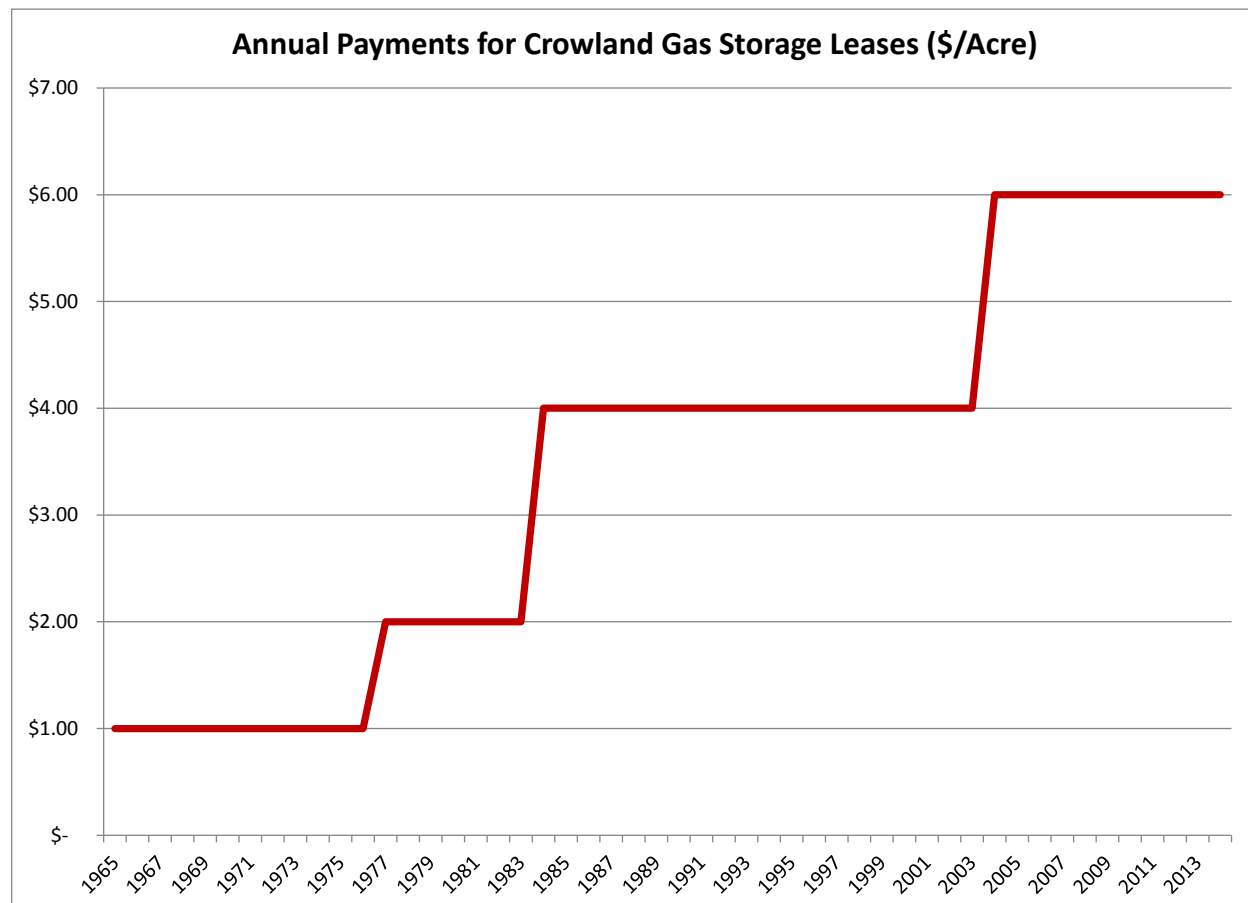


Figure 11 Crowland Annual Lease Payments

6.2 COMPARISON OF CROWLAND COMPENSATION AMOUNTS TO ENBRIDGE'S OTHER STORAGE LEASEHOLDERS

Figure 12 illustrates the payments that Enbridge has made to both Crowland and its other gas storage leaseholders since 1965 (note the differences in scales). It is clear that from the onset that while there has been a historical relationship between these payments; the level of payments made to Crowland leaseholders has been less than the payments made to other leaseholders. This relationship will be discussed further in this 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