



ONTARIO ENERGY BOARD

Volume: ISSUES DAY

16 SEPTEMBER 2003

BEFORE:
A. C. SPOEL
B. SMITH

PRESIDING MEMBER
MEMBER

RP-2000-0005

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IN THE MATTER OF the *Ontario Energy Board Act, 1998, S.O. 1998, c.15 (Sched. B)*; AND IN THE MATTER OF an Application by the landowners in the Amended Application for just and equitable compensation in respect of gas or oil rights or the right to store gas under section 38(3) of the *Ontario Energy Board Act*; AND IN THE MATTER OF an Application by the landowners in pools being the subject of proceedings in Board file RP-1999-0047 (Century Pools Phase II) pursuant to the Board's order of February 2, 2000, for just and equitable compensation for the Century Pools Phase II development under section 38(2) of the *Ontario Energy Board Act*.

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RP-2000-0005

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16 SEPTEMBER 2003

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HEARING HELD AT TORONTO, ONTARIO

5

APPEARANCES

6

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STEVE McCANN
ZORA CRNOJACKI
ROMAN CHYCOTA
PAUL VOGEL
ROBYN MARTILLA
PATRICIA JACKSON
EMMALENE LANG

Board Counsel
Board Staff
Board Staff
Lambton County Storage Association
Lambton County Storage Association
Union Gas
On her own behalf

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--- Upon commencing at 2:06 p.m.

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MS. SPOEL: Be seated.

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Let's see if this sound system works. Can everybody hear me? Good.

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MR. McCANN: I think so.

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MS. SPOEL: Good afternoon. We're here to resume the matter of application by landowners for just and equitable compensation in respect of oil -- or gas or oil rights and the right to store gas under section 38(3) of the *Ontario Energy Board Act*.

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Today is Issues Day. I am Cathy Spoel; I'm the Presiding Member in this matter. With me is Brock Smith.

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Can I have appearances, please.

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APPEARANCES:

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MR. McCANN: Steve McCann, Board Counsel -- acting as Board Counsel, and I'm assisted by Zora Crnojacki and Roman Chychota.

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MR. VOGEL: My name is Paul Vogel. With me is my co-counsel Robyn Martilla, and we appear for the LCSA Schedule A applicants.

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MS. JACKSON: My name is Patricia Jackson. I'm counsel for Union Gas, and I'm accompanied by Bill Wachsmuth, who is Administrative Manager, Regulatory Projects, for Union Gas.

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MS. SPOEL: Thank you.

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Before we begin --

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MS. LANG: And I am Emmalene Lang, representing myself, with my husband Don.

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MS. SPOEL: Thank you, Mrs. Lang. I'm sorry.

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Are there any other parties here representing themselves?

Thank you.

PRELIMINARY MATTERS:

MS. SPOEL: Before we start, are there any preliminary matters that any of the parties would like to address?

MR. McCANN: Just very briefly, Madam Chair. We have and had distributed, I guess --

Zora?

MS. CRNOJACKI: Yes, we have all copies --

MR. McCANN: We will distribute a summary of the status of the applicants. It's a complete listing of the applicants in this matter, and I would invite anybody who has any comments on it from Union or the LCSA to make those comments to it, and we will attach it to the next Procedural Order in order to try and have an updated list of applicants that we can all rely on, because there are numerous applicants in this matter.

And I should note that there are several documents to which we'll be making reference, I think, this afternoon, which have been given exhibit numbers. I don't necessarily have them, but they do have exhibit numbers if they've come into the Board.

One is an agreed issues list which also contains a couple of issues that are indicated as disputed, which was agreed -- this list or this document was agreed between the applicants and Union Gas, and I think we'll get to that momentarily. And it is Exhibit B.13.1.

EXHIBIT NO. B.13.1: AGREED-UPON ISSUES LIST

MR. McCANN: B.13.2 is a proposed issues list compiled by Karen Fournie, dated September 11th, 2003. I think everyone has that.

EXHIBIT NO. B.13.2: PROPOSED ISSUES LIST SUBMITTED BY KAREN FOURNIE, DATED SEPTEMBER 11, 2003

MR. McCANN: B.13.3 is a proposed issues list filed by Joseph Fournie and Karen Fournie, also dated September 11th.

EXHIBIT NO. B.13.3: PROPOSED ISSUES LIST SUBMITTED BY JOSEPH & KAREN FOURNIE, DATED SEPTEMBER 11, 2003

MR. McCANN: B.13.4 is a proposed issues list filed by Mrs. Lang on September 15th or dated September 15th.

EXHIBIT NO. B.13.4: PROPOSED ISSUES LIST SUBMITTED BY EMMALENE LANG, DATED SEPTEMBER 15, 2003

MR. McCANN: And B.13.5 is an issues list that was filed at the hearing in Sarnia by Don and Juliana Crowe, but we're bringing it forward for the purposes -- for the purpose of today's issues day.

EXHIBIT NO. B.13.5: ISSUES LIST SUBMITTED BY DON & JULIANA CROWE, DATED JUNE 12, 2003

MR. McCANN: And I just wanted to list those so we're all clear on what documents we're talking about this afternoon. And with that, I'll hand it back to you.

MS. SPOEL: Mr. McCann, should the applicants' status summary list that you have circulated have an exhibit number as well?

MR. McCANN: I didn't really think it needed one. Our proposal is to send it out with the next Procedural order, in case there may be some, you know, matters that need to be brought to our attention about it before we finalize it.

MS. JACKSON: I had understood it was being circulated, just for any other further corrections, before it got appended to a Procedural Order.

MS. SPOEL: But it's likely to get lost if it doesn't have numbers on them; that's all. That's fine.

Do any of the other parties have any preliminary matters?

MR. VOGEL: No, Madam Chair.

MS. SPOEL: In that case, what I would propose that we do is perhaps Mr. Vogel, as counsel for most of the applicants, you could very briefly summarize for us the agreed-upon list of issues so we know what kinds of matters you think will be dealt with under each heading.

Some of them, I think, are fairly self-explanatory. Some might need a little bit more flushing out.

And, Ms. Jackson, of course, if there's anything Mr. Vogel leaves off, you can always add it in later.

58
And then I would propose that, Mr. Vogel, you make your submissions on the disputed issues as to why they should be included, and then, of course, Ms. Jackson, you will have the opportunity to respond to that.

59
Mrs. Lang, the issue raised in -- you have an issue specifically raised in your letter, which I think we can probably break down issue 1.3 on the main list to include your residual gas storage issues in there -- or sorry, residual gas compensation issues in there as a separate subitem. And after Mr. Vogel has finished, perhaps we can look at that possibility as a good place to slot it in on the list.

60
The other thing that -- I think that the issues raised by the other parties that are not represented by counsel can all be fit in within the issues on the agreed-upon list. But if there's any objection, Ms. Jackson, to any of the matters specifically raised being in any way dealt with in the hearing, we'd like to hear about that now.

61
MS. JACKSON: I think it was -- just to jump ahead, Madam Chair, I think it's our understanding that from what we understand of these issues as they are raised by the other applicants that they all would find a home on the current issues list.

62
And might I just, while I'm saying that, give you and through you, Mrs. Lang, a suggested wording to amplify -- as a further categorization under 1.3, a subcategory which might be called "Review of Compensation for Residual Gas for Mrs. Lang in Waubuno Pool," if that would cover it. It seemed to us to cover the issue that she wanted to raise.

63
I mention that, not that we address it now, but so that everybody can reflect on it.

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MS. SPOEL: All right. Thank you, Ms. Jackson.

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Mr. Vogel, over to you.

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MR. VOGEL: Thank you, Madam Chair.

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SUBMISSIONS BY MR. VOGEL:

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MR. VOGEL: If you refer to Exhibit B.13.1, that is the agreed issues list, and as I think you're aware, Madam Chair, this application is concerned with just and equitable compensation under section 38 of the *OEB Act* for P&G and storage rights and for storage facilities.

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So the issues list that you have before you is -- pretty well tracks and is drawn from the application and the prefiled evidence.

70
So issue 1.1 is just and equitable compensation with respect to storage and P&G rights, which have been conveyed to Union in existing leases. And the fair and equitable compensation under 1.1 is

with respect to both the inside acres, that is the DSA acres, and lands outside the currently designated DSA.

And under issue 1.1.2 there, you'll see reference to an issue with respect to Mr. Feenstra and others, which you considered in the standing hearing, which is landowners who formerly had lands that were within the DSA but on designation are now outside acres, what is fair and equitable compensation with respect to those.

In any event, as far as the Schedule A applicants go, the compensation being requested from the Board on this application is both a base fixed amount per acre for inside and outside acres, reflecting the present compensation structure and, in addition to that, a royalty-based payment annually, being a royalty on Union's transaction margin and market premium revenue streams.

So that's what the reference to the royalty-based payment is there. It's in addition to the base fixed payment per acre and it also would be paid on a per acre basis, inside and outside. Again, with provision for annual adjustment of both of those payments.

Issue 1.2 then, relates to fair and equitable compensation for storage facilities and the nature of those facilities is listed there, that's wellheads and the gathering line that service them, the roadways, and then temporary lands that have been used for construction purposes in the Century Pools Phase II construction.

Issue 1.2.5, again drawing from the prefiled evidence and the application is the various aspects of compensation, facilities compensation that the LCSA applicants are submitting to the Board should be considered in coming to fair and equitable compensation for those facilities.

Issue 1.2.6, again drawing from the prefiled evidence, the submission made through that evidence is that compensation for these facilities be on a per facility basis and that the compensation should be adjusted where there is more than one facility. So you will see in the prefiled evidence there is a proposal made with respect to what would be fair and equitable compensation for one facility, and then a reduced amount for subsequent facilities. And so that's how that issue ties into facilities compensation and, again, provision for annual adjustment of that compensation.

Issue 1.3 is the issue of residual gas for what's referred to in the prefiled evidence as the uneconomic residual gas, which is the residual gas below 50 PSI down to zero PSI, and that issue is being advanced and pursued on behalf of the landowners in the Bluewater and the Oil City pools at this time.

All of these, by agreement with Union, all of the compensation to be determined on this application would be retroactive to 1999, and therefore, there will be an issue with respect to how interest is calculated on those payments.

Issue 2, number 2 there, term, simply refers to the term of whatever order the Board may grant on this application, for what period of time will that provide for the compensation being paid?

And, then there is an issue with respect to the cost, which is both the residual cost left over from Century Pools Phase II, as well as the costs of this application, which will be addressed under that issue.

So those are in sort of a brief nutshell, I suppose, that's my summary of the agreed issues list. If you have any questions, I would be pleased to answer them.

MS. SPOEL: Excuse me. It's agreed then, between Union and the landowners, that whatever order we make will be retroactive to 1999, so that's not actually an issue that we have to determine, is that correct?

MS. JACKSON: To the extent that the Board makes any orders with respect to components of compensation that have been paid since 1999 and those components have gone up, it will have to go back and the only question is, what's the interest rate?

MS. SPOEL: But there is no issue as between yourselves as to the period?

MS. JACKSON: I don't understand there to be, no.

MS. SPOEL: Thank you. And Mr. Vogel, I wasn't involved in the Century Pools Phase II hearing. What are the costs that are left over from that hearing?

MR. VOGEL: The costs of that hearing were not resolved. As you may be aware, the compensation issues from Century Pools Phase II were consolidated with this pending section 38 application.

MS. SPOEL: Right.

MR. VOGEL: So that costs were not resolved at the time of Century Pools Phase II. There was a payment made, some payment made by Union at that time, which is to be credited against any cost award that may be made in this proceeding. But the costs of Century Pools Phase II and the costs of this proceeding are still an issue for the Board to decide in this proceeding.

MS. SPOEL: Okay, thank you. Ms. Jackson, do you have anything you would like to add on --

MS. JACKSON: Two or three brief observations, if I might.

MS. SPOEL: Yes.

SUBMISSIONS BY MS. JACKSON:

MS. JACKSON: First of all, with respect to 1.1, my friend said storage and P&G rights conveyed by Union by lease agreements and otherwise. Included in that, of course, are rights conveyed as a result of the Board's order. We certainly concede that people are entitled to compensation even if they don't have agreements with Union Gas and I wanted to make that clear.

With respect to the costs my friend is correct, and indeed, he will be more familiar with it than I, since I wasn't involved, but I think what was left open from the Century Pools Phase II hearing is the question of -- Union agreed that the applicants in that proceeding would be -- it would be open to them in this proceeding to say that the payment -- to argue we would say not, but to argue the payment that had been made to them was not sufficient.

MS. SPOEL: Right.

MS. JACKSON: But costs, of course, theoretically at least and in fact at this stage, potentially, for these proceedings, could go either way. That is, either an award for the applicants or an award against the applicants.

And the last point I wanted to make may go without saying, but every time I think something goes without saying, I subsequently find it doesn't. While Union certainly agrees that there are a number of items on this list that do call for specific compensation as part of the just and equitable compensation the act requires, I know the Board will not assume the mere fact that we have allowed all of these on the list and therefore conceded they are issues, is a concession, because we do not make it, that compensation is required for every single thing on this list. One example being an additional royalty-based payment. There is a live issue between us as to whether there should be such a payment. We have no issue that it is an issue.

MS. SPOEL: We understand it's an issue to be determined at the hearing, and if you were agreed on it we wouldn't have to have a hearing.

MS. JACKSON: Quite, quite.

MS. SPOEL: We understand that, that they're issues.

MS. JACKSON: By that I mean all I was trying to drive home is with respect to each of these, it isn't just a question of there being a quantum of compensation allocable to the item, the issue in some cases is not restricted to quantum. The issue in some cases extends to whether that item of compensation is appropriate at all.

MS. SPOEL: Right. We understand that to be your position.

MS. JACKSON: Yes.

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MS. SPOEL: Thank you. Yes, Mrs. Lang.

105

MRS. LANG: Madame Chair, I would like my issues to be kept separate and isolated from the issues of the other parties. My case is unique and that is why I am here. I have several things that have to be dealt with separately. Thank you.

106

MS. SPOEL: That's fine, Mrs. Lang. But in terms of actually having a list of matters that we're going to be discussing in the hearing, we need, as a Board, one list, because it becomes our issues list not the parties issues list. So we need to put your issues somewhere on the list, the main list.

107

MRS. LANG: All right.

108

MS. SPOEL: And logically, they may or may not fit in with other headings and we'll certainly identify them as your issues, but we will have an issues list which we will issue as part of a Procedural Order. It becomes our list once we do that. So we need to make sure your issues are incorporated on the main list in some way, shape or form, otherwise they might get lost.

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So if you can -- you will note the other parties have -- we don't, sort of, make those succinct little descriptions of what the issues are.

110

If you can do that for your issues --

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MS. LANG: I have.

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MS. SPOEL: -- then we'll slot them in to the appropriate spots, if that is acceptable, or the spots that seem appropriate to us. Not necessarily the spots that seem appropriate to the other parties, but the spots that seem appropriate to us so that they don't get lost.

113

MR. McCANN: I guess the one concern that occurs to me, Madam Chair, and this may apply to Mrs. Lang and the other applicants who are not represented by Cohen Highley, who have filed letters setting out issues, there may be some of the general issues which may look a little different to them than they do to the applicants. The costs, for example, and the interest rate applicable to retroactive payments. I have no idea what issues those might raise for these applicants.

114

But I guess they need to be able to make their own arguments on those issues at the appropriate time. As long as we understand that they can do that, I think we can come up with one single issues list, which I think probably is desirable.

115

MS. SPOEL: I have your list of issues here, Mrs. Lang, and it seems to me that an issue, if I can put it this way, for you is the basis upon which residual gas should be paid.

116

Now, your submission is it should be paid down to zero. Union will presumably take some other position. But the issue is on what basis should it be paid, which you can then argue either way.

And similarly for the price for residual gas, I mean, we can put on the issues list price to be paid for residual gas, and that should make sure that your issue is not lost.

Would it be acceptable if we do it that way?

MS. LANG: Yes, I'd appreciate that, so long as it's put pressure down to 50, from the pressure of abandonment down to 50. This is dealing with 50 down to zero.

MS. SPOEL: Right.

MS. LANG: Things like that.

MS. SPOEL: Yes.

MS. LANG: Okay. Thank you.

MS. SPOEL: Thank you.

Is that approach acceptable to the other parties --

MS. JACKSON: That sounds sensible to me, Madam Chair, but I would suggest, and it might meet Mrs. Lang's requirements better as well, that we identify that as an issue that relates to Mrs. Lang.

MS. SPOEL: Yes.

MS. JACKSON: Because the larger issue only does relate to Mrs. Lang, I think.

MS. SPOEL: Correct.

All right, Mr. Vogel, perhaps you could address the two disputed issues.

FURTHER SUBMISSIONS BY MR. VOGEL:

MR. VOGEL: Thank you, Madam Chair.

I do have a volume, a small volume of reference materials I may make reference to while I'm addressing these issues, so if I could file a copy of that with the Board at this time.

MS. SPOEL: That would be fine.

MR. VOGEL: So the first issue being proposed on behalf of the LCSA applicants to be added to the issues list is proposed as issues 1.2.

And as I noted earlier, issue 1.1 is the storage and P&G rights, which have been conveyed to Union, and compensation under those leases for the P&G and storage rights.

There are, however, a number of landowners, LCSA landowners involved on this application, who have never, they or their predecessors in title, have never conveyed the storage lease rights and P&G rights to Union.

So as 1.1 relates to compensation for those people who have conveyed their rights, as proposed as issue 1.2 is the storage and P&G rights for those people who have not conveyed their rights, that is, the lease rights to Union.

And in addition to the base payment and the variable payment that I talked about earlier in connection with issue 1.1, advanced in the application and in the prefiled evidence is a request on behalf of those landowners that have not conveyed their lease rights for compensation for those lease rights. So that's an additional issue relevant to those particular landowners.

Perhaps the best way I can explain this to the Board is -- I'm not sure if the Board -- have you got a copy of the application, the revised application with you or not?

MS. SPOEL: No, we don't, sorry.

MR. VOGEL: Well, let me just -- I can give you the reference, then, and in paragraph 66 under the "Relief Sought" portion of the application.

In paragraph 66, you will see in (a) that there is a request for compensation for all of the LCSA applicants, and that's the current fixed -- the base fixed payment that I talked about before and the variable payment that I talked about before. And that's in (1) and (2) of that paragraph.

So in (3), the request is that for landowners without leases, in addition to receiving those annual payments, what's being requested is a direction requiring Union to negotiate lease agreements with them within six months, and failing which, at the option of the landowner, requiring Union to compensate them for their storage rights in an amount determined by the Board to be equivalent to payments by Union and other storage operators to commercial operators for equivalent lease rights.

146
So the issue being raised in subparagraph (3) there is, apart from the annual payments that other landowners are receiving under leases, for these people who have no lease agreements, in addition they're seeking fair and equitable compensation under section 38(2) for their P&G and storage rights.

147
If you refer to the reference materials at tab 1, you will find what you've already devoted considerable attention to in the standing order, which is section 38. Under section 38(2), subject to any agreement, the person authorized by an order under subsection (1):

148
"...shall make to the owners of any gas or oil rights or any right to store gas in the area just and equitable compensation in respect of gas or oil rights."

149
Well, the people we're talking about, there is no agreement between them and Union relevant to their properties. So my submission is that they are pursuing this claim for just and equitable compensation under 38(2)(a), and in addition to the per-acre payment that others are receiving, they're looking for fair and equitable compensation for their lease rights.

150
If you turn to tab 2 there --

151
MS. SPOEL: Sorry, Mr. Vogel. Can I just, if you don't mind, interrupt you for just a second to make sure I understand where you're going here.

152
So looking at section 38, what you're saying is that because the Board has issued an order authorizing Union to store gas in the area that Union -- that therefore the owners of the gas and oil rights or storage rights in that -- the area to which the Board's order applies are entitled to compensation, whether Union actually does inject the gas or not, or...

153
MR. VOGEL: Yes. They're entitled under -- where their rights have been appropriated, or some would say expropriated, they're entitled to compensation for that property interest. And that will either happen under a lease, or it should happen under section 38(2)(a). That should be determined by the Board, the fair and equitable compensation.

154
If you turn to tab 2 in those reference materials, you'll see that -- and I've just pulled out a sample of a storage lease that's similar to the other storage leases that you've looked at. And what you'll see there in the structure of the storage lease, the consideration which is paid by Union is -- is in two parts.

155
The first part is, if you look after -- after the granting clause, it says:

156
"... witnesseth that in consideration of the sum..." and in this particular lease, it was \$250, "... now paid to the lessor by the lessee, and the further rents covenants and agreements hereinafter reserved and contained..."

157
So in other words for people who have leases, they have been paid a certain amount of consideration for their lease rights, and then under their leases they are entitled to an annual payment which, as you're aware, under paragraph 18 of the standard form lease, at the time of designation it's the additional acreage rental, that annual rental payment which is -- which is adjusted.

158
So the compensation, in my submission to you, for lease rights, is the right to lease and then an annual payment thereafter. And for people who have no leases, all they've been getting is the annual payment and they've never, never been paid for the lease rights and that's the subject, in my submission --

159
MR. SMITH: Is there gas being stored on the property even though there is no lease?

160
MR. VOGEL: Yes. They are part of Union's storage pool and therefore, Union is using the storage, the subsurface storage that this landowner owns, but it's never part of their rights.

161
MR. SMITH: Can you give just a brief case history as to why a lease would not be developed or signed. Is it a matter of they disagree over terms, or how does this come about?

162
MR. VOGEL: I think there's some insight into that issue, actually, in some transcript references that I've included in this reference material, and we'll see why it is and how it is that this problem's developed.

163
Just before I take you to those transcript references, again I give you another reference from the -- this issue is dealt with extensively in Dr. Hesell's evidence, prefiled evidence in the application. And if I can give you the reference there, again, you may want to refer to it. It's at -- this issue is dealt with in the amended application at tab 2(a)(ii), at pages 8 to 14. And Dr. Hessel summarizes the issue at pages 5 and 6. And what he says is:

164
"Some of the landowners in the CPII pools ..." this issue goes beyond the CPII pools, there are landowners in other pools as well "... do not have valid storage leases with Union Gas and they have not been compensated for the storage rights even though the pools have been used for storage." In that case, since the summer of 2000.

165
"Union has no incentive to settle with these landowners since they can use the reservoirs for storage once the pool has been designated and injection begins. It is recommended that Union be required to negotiate leases with the landowners that do not have valid storage leases within a limited time period. The Board should impose a settlement or the case should go to binding arbitration if the agreement can not be reached by a set date.

166
"The high prices paid by storage operators for commercially-assembled storage leases attest to the increasing use and usefulness of storage in Ontario."

167
It then, of course, goes back to the 1964 reference and that's one of the principles underlying storage compensation.

168
"These high prices should be taken into account when settlements are imposed."

169
So that's sort of, as I say, it's dealt with in a number of pages, 8 to 14, in that evidence. But that's a summary of the issue.

170
If you look, for example, Mr. Smith, at tab 4 in these reference materials, this is an excerpt from the decision in the Century Pools Phase I decision. This issue has arisen before the Board on a number of these designation applications, but this is the Century Pools Phase I excerpt at tab 4 there.

171
You will see, at the bottom of page 22, the Board in its reasons for decision addresses the position of, in this case, two or three landowners on that application who had not entered into leases with Union.

172
So on page 22 at paragraph 3.2.19, the Board deals with a situation of Union holds P&G leases on the lands to be included within the proposed designated area, except for the property of Leonard and Deborah McMurphy and the property of William and Evelyn Thomas, which is 75 acres within the DSA.

173
"The Board is mindful that the inclusion of these lands within the boundary of the designated area limits the development of other oil and gas resources that might exist due to the necessity of ensuring the integrity of the Guelph reservoir."

174
So the Board is recognizing there that by issuing a designation order, it is adversely affecting the rights of those people who have not conveyed their rights to Union. And over the page at 3.2.21, the Board continues:

175
"There is no P&G lease on the McMurphy property. However, mindful of this impact of designation on their P&G rights, the Board directs that the McMurphy's be offered the same compensation as the other lessors."

176
That's the annual payment.

177
"The same is directed with regards to the holder of the P&G rights on the Thomas property. This direction is without prejudice to any application that might be brought to the Board under section 21.3 of the *Act* ..." as it was then "... for a determination of compensation."

178
And the Board goes on in the CPI reasons for decision to deal with the storage leases.

179 "Union also holds the storage leases for lands to be included within the proposed designated area, except for the properties of Leonard and Deborah McMurphy, William and Evelyn Thomas, and the Higgs family. The land in question totals 125 acres, within the area to be designated.

180 "The Board recognizes that the inclusion of these 125 acres effectively expropriates the gas storage rights from the property owners to Union."

181 Then it continues:

182 "The owner of the storage rights must be compensated for the loss of their storage rights on the 125 acres. Should the Booth Creek Pool be designated as a gas storage area..." which it was "... the Board will require that the owners of the storage rights be offered the same compensation as the annual payment that's been offered for the gas storage rights and accepted by other lessors. This direction is without prejudice to any application that might be brought to the Board under section 21.3 of the *Act* for determination."

183 So, Mr. Smith, this is an example of how this situation arises where you've got landowners, in this case owning a significant amount of the storage rights under the DSA with whom Union has not entered into lease agreements. And the Board here in this Century Pools Phase I reasons for decision, is recognizing that, in effect, what you have is an expropriation, is recognizing the right of those people to be compensated, is requiring payment of at least the annual payment, and specifically, without prejudice, the right of those landowners to come before this Board to have the value of those lease rights determined and that's what this issue is about.

184 If you flip to the next tab there --

185 MS. SPOEL: Sorry, Mr. Vogel.

186 MR. VOGEL: Yes.

187 MS. SPOEL: I don't know if this will speed things up or not, but a few minutes ago Ms. Jackson commented that under issue 1.1, that that covered storage and P&G rights conveyed to Union by whatever means, whether it was by lease or by order of the Board.

188 Now, I'm wondering if, in a case like this one that you have in your materials, where there is no lease but the Board has determined that storage rights will, in effect -- or the use of the storage rights will, in effect, be conveyed by Union, whether Ms. Jackson's comment about issue 1.1 means that, in fact, those matters are included on the agreed upon issues list rather than having to be added as a separate issue?

189 MR. VOGEL: That's fair enough, Madame Chair. As long as we recognize that over and above fair and equitable per-acre compensation, what we're talking about is fair and equitable compensation for the lease rights for this group that haven't entered into leases and have had those rights expropriated.

MS. SPOEL: That is probably part of the overall compensation. I would think if they haven't got it yet.

I don't know, Ms. Jackson, do you have any comment on this?

MS. JACKSON: My difficulty is this: Whether rights have gone to Union as a result of an agreement, and whenever that agreement might have been made, or whether the rights have gone to Union as a result of the Board order, the landowners, whether they have agreements or not -- well, the landowners we're here talking about, those who are entitled to orders, none of those landowners have current agreements. They're being paid the current rate of compensation.

But the people whom the Board has determined have an entitlement to a Board order are people who do not currently have agreements. Some of those people have never had agreements, and some of the people have had agreements that expired.

The intention of this issues list is to identify all of the components of just and equitable compensation to which they would be entitled, arguably entitled. And my difficulty with my friend's submission is if you go through that list, and you've awarded whatever is just and equitable compensation under each of these items for those landowners who don't have agreements, whether they -- whether that being without agreements is short term or long term, I don't believe -- I don't submit that there's anything less -- left.

Now, my friend took you to a 1960 agreement with Imperial Oil. Nobody will know why Imperial Oil paid \$250 to those particular landowners in 1960. But if that -- if that had been a once-and-for-all-time payment, then perhaps those were landowners who had an agreement.

But if they're landowners who today don't have an agreement with Union with respect to compensation, they're entitled to just and equitable compensation. All the landowners are, and I would have thought the principles of just and equitable compensation would be the same for all the landowners.

So if you go through the list, I don't think there's anything left over. This is a list of what is -- what landowners are entitled to be compensated for for the taking of their rights, whether that taking was by agreement or by order.

And my difficulty with my friend's suggestion that there should be something else is I don't know what that something else is. I don't think there is anything else.

MS. SPOEL: Well, Mr. Vogel, is there -- I mean, let's take -- let's talk about, you know, the Higgses and the McMurphys and the Thomases, since they're referred to in the Board's decision as not having agreements.

Is there something that they would be -- you would be seeking for as compensation for them that would not be covered --

MR. VOGEL: Yes.

MS. SPOEL: -- in the rest of the issues list?

MR. VOGEL: Yes. And that is compensation for their lease rights, okay?

The example that I put in front of you of a lease is typical of virtually all of the storage leases. In fact, I think all of the storage leases on this application that are before you, they're all structured the same way. There's an initial payment of some amount.

The consideration under a lease is the initial payment for some amount for lease rights and an annual payment thereafter. So that the -- the additional compensation for those people without leases is the compensation for the expropriation of their storage rights, which has resulted from the designation of that pool, and those people have never been compensated for that.

And the Board has said in the excerpt that we've just been through on Century Pools Phase I, the Board has said that they're entitled to be compensated and that the payment of annual compensation by Union is specifically without prejudice to their right to come to the Board to have that -- their lease rights valued. And that's the additional, Madam Chair, that's the additional issue that has to be raised.

Now, if my friend is saying -- my friend is saying let's just talk about just and equitable compensation for everybody, and some people will have leases, and some people won't, I'm content with that, as long as we recognize that those that don't have leases are seeking in addition to the per-acre payment, the annual per-acre payment, are seeking compensation for their lease rights.

And, in my view, because they are seeking this additional matter, it would make some sense to me, in any event, to put it as issue 1.2. But you know, I don't care whether it gets a separate issue designation or not, as long as we're -- all understand that there is this additional component of compensation for those people that has not been dealt with.

And if I can just continue this saga of Mr. McMurphy and the Higgsses and the others, so what you have is a very clear statement by the Board in CPI that these people had their rights expropriated and that they should be compensated.

And just before I come back to McMurphy, at tab 5 you'll see that the situation is the same in CPII with respect to, for example, a landowner whose name is MacRae.

And I think what you see at tab 5, if you'll just bear with me for a moment, Madam Chair, what you'll see at tab 5 there is an excerpt from the technical conference on Century Pools Phase II, and it -- and it, I think, lends some light on Union's position and Mr. Smith how these types of situations develop.

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So you've got at page 288 there, the discussion starts with respect to the MacRae lease, and my question was:

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"Union acknowledged that it does not have a valid lease with the MacRaes?"

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And Mr. Lowe responded, "That's right." And then he continues, so I continue:

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"So there is no valid lease on that property?"

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"Mr. Low: That was our conclusion."

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Then I go ask:

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"Dealing with your response to Board Staff Interrogatory 124, you've given us some of the information about leased and unleased acres in those pools. I gather that that reflects -- the unleased acres, are those situations where you have been unable to come to agreements with landowners on a lease; is that right?"

219
"Mr. Low: For the time being, yes."

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"Mr. Vogel: And so for the time being, those landowners haven't agreed to enter into a lease which would support the application, the storage application that Union has brought; is that correct?"

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"Mr. Low: Some of those negotiations are still ongoing, but, yes."

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"Mr. Vogel: Assume for the moment that those negotiations, to the extent you have indicated here, are unsuccessful. What are Union's intentions in that event?"

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"Mr. Low: Our intention would be to make one last offer prior to injection for those lease rights, to offer the standard package of compensation to those landowners."

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"Mr. Vogel: And if that's rejected?"

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"Mr. Low: If that's rejected, a decision -- either party, either Union or the landowners, have the option to make their application to the Ontario Energy Board to have their rates determined."

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So Union on Century Pools Phase II itself was saying, you know, if you can't agree with us on what we're going to pay you for your lease rights, you know, then you have the right to go to the Board.

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So that was clearly their position there.

MS. SPOEL: Mr. Vogel, I don't think that there is an issue that if a person does not have an agreement, they have the right to come to the Board. I mean, that seems to me -- 228

MR. VOGEL: Well, but -- and specifically they have -- excuse me, Madam Chair. But specifically they have the right to be compensated, just like all other landowners -- 229

MS. SPOEL: They have the right to -- 230

MR. VOGEL: -- for their rights plus their annual payment. That's the structure of -- that's the structure of storage compensation. 231

MS. SPOEL: Well, they have the right to apply to us -- 232

MR. VOGEL: Yes. 233

MS. SPOEL: -- for compensation, whatever form that might take. 234

MR. VOGEL: Yes. 235

MS. SPOEL: I guess I still don't understand where the two of you part company, in that if they haven't got -- if they don't have an agreement, they're entitled to be here. And, in fact, as Ms. Jackson has already said, everyone who is entitled to an order of the Board is a person who, at present, if they've had an agreement, it's expired or is to be renegotiated, or, you know, was never completed or something of that nature. 236

So I guess I still don't understand when it comes to looking at the general kinds of descriptions of compensation, why it matters whether the rights were at some time conveyed to Union or not. 237

MR. VOGEL: It doesn't matter to me in the least, Madam Chair, as long as we understand that the position being advanced on the application and the claim being made for landowners without leases is, in addition to the per-acre payment, they're seeking compensation for the lease rights that have been expropriated. 238

And as long as that's understood by my friends at Union, then that's fine, then let's just leave it at that. We don't have to put anything about these people on there. 239

MS. SPOEL: Ms. Jackson -- 240

MS. JACKSON: May I try again? 241

MS. SPOEL: Well --

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MS. JACKSON: To just explain -- well, to try to explain what I am now sensing is the problem.

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MS. SPOEL: Certainly.

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FURTHER SUBMISSIONS BY MS. JACKSON:

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MS. JACKSON: My friend says for certain landowners, he wants compensation for their lease rights plus their annual payments.

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Now, the Board has said, and I think it was in the Bentpath decision some years ago, has said the appropriate way to compensate for the rights, storage, and P&G, is through annual payments.

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And so the structure of the annual payments has been and continues to be, there's an annual payment for the rights. For the storage and P&G rights and associated disturbances.

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Where my friend and I part company is the suggestion that there's something else. If there is something else, I think it's incumbent upon my friend to say what that is and we should put it on the list.

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MR. VOGEL: It's the lease rights.

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MS. JACKSON: The lease rights are the rights to storage and P&G. And if Union never agrees with the landowners, they are still entitled to be just and equitably compensated for all of those rights. And that compensation is -- that principle applies to everyone and everyone, therefore, goes down this list and says what they think those rights are worth.

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There's nothing else.

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MR. VOGEL: There are two components, Madame Chair, to storage compensation as we saw in the lease and as you will see in any other storage lease that you look at.

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One is, the compensation that Union pays for the lease rights and the other is the annual payment.

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The lease itself says: The consideration for this lease is this payment, this up-front payment that we're paying for the lease rights, and this annual payment. That's the way this lease and every other lease is structured. And what we're saying is that if you don't have a lease, you've never been compensated for that first aspect for your lease rights, you've never been compensated. You're getting the annual payment, but you haven't got the other.

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And what the Board said in the Bentpath decision is: Yes, you know, Union has expropriated your rights. You are entitled to compensation for those lease rights. Take that to the Board.

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And you know, in this these other excerpts that are also before you from CPII, that's the end result there. So that the Board, in those cases, is recognizing the effect that its decision has on those storage rights and is saying, you know, if they haven't acquired your storage rights in the way that they have with people with leases, then take that to the Board.

257

And if my friend will acknowledge the claim to be pursued on this application and the issue before the Board is: Should the fair and equitable compensation for the people in that position be their lease rights and the annual payment, that's the issue. And as long as we're agreed that that is the issue, we don't have to say it.

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MS. SPOEL: Well, it seems to me -- and I'm saying this without having gone through every lease -- but the one you've provided to us suggests that in some cases, at least, there has been -- the payment -- I don't think I'm going to try to distinguish here between whether it's lease right or annual payment, but it's taken the form of a lump sum payment and periodic payment.

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MR. VOGEL: Correct.

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MS. SPOEL: And there may be some cases where there has been only a periodic payment, some cases where there's been both. And that's not a matter on which I think we can make any kind of determination today, because I don't know.

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But it would seem to me that it's an issue as to whether, in the future, payments should take the form of lump sum plus some form of annual payment or an annual payment only. And I'm wondering, Ms. Jackson, whether you have an objection to having that discussed as an issue in this hearing, keeping in mind, of course, the Board may decide one way or the other on the issue. Because obviously, those parties who haven't got an agreement are entitled to have their matter dealt with.

262

But I'm not sure it's going to help us in the long run to sort of hive off parties who have never had an agreement with Union, which seems to be the ones Mr. Vogel is concerned about in this discussion, and deal with them separately from those parties who had an agreement at some stage, because I think there will be a lot more differences than that between different groups in, in any event, and it might be easier to just try to deal with it all at once, without leaving anyone out.

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MR. VOGEL: That would be perfectly satisfactory.

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MS. JACKSON: I'm pausing, Madame Chair, because I understand the desire to deal with this issue in some way, if we can. The difficulty is, the failure to articulate the principle behind it is, I think, going to lead us into a morass.

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I'm aware that there are leases where people have signed and there are no up-front payments. There are places where people have signed and been paid \$5. We saw somebody was paid \$250 in 1960. Some people appear to have had payments on the signing of a lease.

If you turn to the principle, I would say that under the *Act* and in principle, that doesn't affect the fact that everybody is entitled -- if there's an annual compensation for the taking of rights, everybody is entitled to it.

MS. SPOEL: But, Ms. Jackson, I don't think the *Act* says it is an annual compensation.

MS. JACKSON: No, no.

MS. SPOEL: I think it says just and equitable compensation, and surely it is open to Mr. Vogel and his clients to argue that they should get an up-front payment under 1.1.1 and 1.1.2, that everybody should have an up-front payment and it is equally open to you to argue that regardless of the fact that some people may have received an up-front payment, that that's a historic and dated way of doing things and you would prefer to have only annual payments.

Is this not something either of you could argue in the course of the hearing as to what approach to take?

MS. JACKSON: I guess one of the questions I would have, if that is the current phrasing of my friend's issue, is whether he is suggesting that people who did sign leases and didn't get an up-front payment are entitled to it, because that, I think is beyond, with respect, the Board's jurisdiction.

MR. VOGEL: No. I'm not suggesting that.

MS. JACKSON: All right. Well then...

So if I understand that revised issue, it would be whether those who haven't signed agreements are entitled to some additional up-front payment. Those who never signed agreements?

MR. VOGEL: I think the issue is: Where Union does not have valid leases on a property --

MS. JACKSON: Well, it's really never. Because almost --

MR. VOGEL: Where Union does not have valid leases on a property, is Union obligated to -- does just and equitable compensation for those landowners include payment for their lease rights in addition to the annual payment? That's what it is.

MS. SPOEL: Isn't the annual payment for the lease rights as well?

MR. VOGEL: It's the second aspect of the compensation for the lease rights.

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MS. SPOEL: So what you're saying is, should compensation for the lease rights include an element of an up-front payment as well as an annual payment? It's all part of compensation.

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MR. VOGEL: Yes, where union has expropriated the rights of these landowners and it doesn't have a valid lease agreement, then the issue is, should they have to compensate those landowners for the lease rights. Is that part of just and equitable compensation? That's the issue.

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MS. SPOEL: I'm sorry, Mr. Vogel, but the whole thing is about compensation.

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MR. VOGEL: Yes.

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MS. SPOEL: And I mean, it's a bit like a property settlement or something after a divorce. You can have everything done in a lump sum or you can have annual payments. It's still compensation, if you like, or equalization of property or whatever.

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The question is, where there hasn't been a lease, should the compensation include --

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MR. VOGEL: Yes.

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MS. SPOEL: -- some element of a one-time, up-front payment or should the people only receive an annual payment? Because the annual payment is still compensation. We only have a jurisdiction to deal with just and equitable compensation.

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MR. VOGEL: Yes, that's absolutely correct, yes.

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MS. SPOEL: So everything you bring to us has to somehow fit into some box of just and -- of compensation.

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MR. VOGEL: That's absolutely correct.

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MS. SPOEL: The question would be what form that compensation should take, if I'm -- I think what you're saying is that your submission on that issue would be that where there was never a lease, that the compensation should include a lump sum payment at the front end, as well as an annual payment. And Ms. Jackson's client will be taking the position that it should not.

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MS. JACKSON: That's right.

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MR. VOGEL: Correct.

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MS. SPOEL: But that still seems, to me, that we can fit all of that neatly into issue 1.1. I mean, we could make 1.1, point, you know, 1A or 2A or whatever and say, you know, up-front payment for those who never had a lease, if you like.

MR. VOGEL: How about 1.1.4?

MS. SPOEL: I would like to separate it out to create two classes of landowners.

MR. VOGEL: No, I -- true enough.

How about 1.1.4, being lump-sum payments for landowners without leases --

MS. SPOEL: It's a lump-sum payment, if you wish.

MS. JACKSON: Or as my friend has described it, he has described it as being associated with the rights, so I would suggest its home is in 1.1.

But I think the concept is should landowners who've never had a written lease agreement be entitled to an additional up-front payment?

MS. SPOEL: Right. Because presumably those landowners have never received an up-front payment.

MR. VOGEL: Yes.

MS. JACKSON: That's right.

MS. SPOEL: And Mr. Vogel's position would be -- is, I understand it, they should. And yours is that they should not.

MS. JACKSON: That's right.

MS. SPOEL: But that seems to me to be an issue that we can resolve.

MS. JACKSON: That's an issue. I think narrowed that way and with -- and taking away the slightly confusing language of lease rights, I think, clarifies it substantially --

MS. SPOEL: And would you have any difficulty, Ms. Jackson, in including it in that form on the issues list?

MS. JACKSON: No. No. I think my question has indicated that it's an issue.

MS. SPOEL: Right. Fine.

MR. VOGEL: So my suggestion is 1.1.4 is a lump-sum payment for landowners without leases.

MS. JACKSON: Who have never had leases.

MS. SPOEL: Who have never had leases, because some have expired. Some landowners will have received a lump-sum payment, and their lease will have expired, but they wouldn't be --

MR. VOGEL: Well, so there's no -- so they're free to deal with their lease rights, okay. Those lease rights have a market value, and that's the issue, so I say lump sum for landowners without leases.

MS. JACKSON: Well, that's --

MS. SPOEL: Well, again, Ms. Jackson, you will be -- it will be open to you to argue your client's position on how we should resolve that issue during the course of the hearing, okay. Likewise, Mr. Vogel.

FURTHER SUBMISSIONS BY MR. VOGEL:

MR. VOGEL: Okay.

The second proposed issue really comes out of the standing order and its review of the compensation equivalence expectation for applicants that are not eligible for a Board order of compensation at this time.

And it's -- as I say, it comes out of the standing order, and it occurs to me, as I read the standing order, that essentially what the Board, as I read it, has done in the standing order, Madam Chair, is that there are really two categories of landowners, and that is landowners who have been determined to be entitled to the benefit of a Board order at this time and landowners who are not entitled to the benefit of a Board order at this time.

But what occurs to me when I read the decision is that at the end of the day, depending on how the Board deals with some of these compensation issues and the nature of the compensation that the Board may order, there may be issues at the end of the day about whether or not a landowner is entitled to the benefit of a Board order, or whether that landowner is covered by the expectation that the Board has indicated with respect to the compensation equivalence.

So if I can just give you an example of what I'm talking about there, in your order the Board has dealt with the position of, for example, the Mandaumin landowners in -- this is in the order in par-

agraph 2, the second section of that paragraph where these landowners, Mandaumin landowners have been determined not to be eligible for a Board order on compensation for storage rights and residual gas at this time.

And you will see on the agreed issues list, the residual gas issue being pursued there is this compensation from 50 to 0 psi in respect of the Bluewater and the Oil City pools.

Well, if you look at the -- and the reason why the Mandaumin landowners were excluded was because of their amending agreement, provisions in their amending agreement.

With respect to this residual gas example, if you look in the Mandaumin amending agreement at paragraph 10, and this is at -- this is at tab 7 in the reference materials.

So at tab 7 in the reference materials you have the Mandaumin amending agreement. At paragraph 10, that's that clause there that deals with residual gas, and you'll see that it deals only with the residual gas down to the abandonment pressure of 50 psi. So the result of the standing order is that those landowners don't have status, as I understand it, don't have -- aren't entitled to the benefit of a Board order on residual gas or at least residual gas to the extent that it's dealt with in this -- in this agreement.

So I'm just presenting this to you as an example of one situation where at the end of the day -- for example, say the Board at the end of the day said, Yes, you should -- Union should pay compensation on those other pools for residual gas down to 0 psi. Then the question that the Mandaumin landowners would have and that I'm suggesting should be reviewed at that time by the Board is: Are we entitled, either because our contract doesn't deal with it, or because of the equivalence expectation that the Board has talked about in its decision, you know, does that -- does that extend to us?

So it would depend on how the Board resolves or deals with the residual gas issue as to whether or not that issue arises.

Another example of where it might arise is with respect to -- with respect to roadway agreements. In the order, in the next part of paragraph 2 in the order, the Board has listed a number of landowners who have six-year roadway agreements and determined that those landowners are not eligible for compensation for roadway land rights at this time.

And of course, the Board also determined that those three landowners who had signed releases, Stop Co. and the others who had signed releases, were entitled to land rights compensation at that time.

So at the end of the day, at the end of the application it will be important, perhaps, depending on what the Board does, to distinguish between land rights compensation as opposed to other elements of compensation for roadways such as production loss and disturbance, which is part of the claim being advanced here.

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So I'm simply suggesting to the Board that at the end of the day here, there may be issues like this Mandaumin issue or like the roadway agreement where depending on what the Board has done with those issues, there will be questions about to what extent they are covered -- they are entitled to the benefit of the order or to what extent they are entitled to the expectation that the Board had regarding equivalence compensation.

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So I'm just suggesting that we insert that as an issue so that at the end of the day we review it. I'm not sure that there's anything that should be really too contentious about that.

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MS. SPOEL: Well, Mr. Vogel, I think that -- normally the Board's practice would be to put things on the issues list that we would expect the parties to file evidence on.

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I recognize here that you've got costs as an agreed-on item on the issues list. In the normal course, we would deal with costs even if it were not listed on the issues list, and I think that an issue -- a matter that may or may not become an issue as an implementation matter once we've made our decision on the rest of the -- on the real issues, if you like, or the issues on which we're going to hear evidence, is more a matter of implementation of the Board's order, rather than an issue per se for the hearing, because you're not going to be able to call -- we've actually dealt with those issues in the motion or the order on the motion on standing. And if at the end of the day, as a result of the order we make on the substantive matters in the hearing, there is some uncertainty as to whether it applies to a party or not, I think the Board is always open to hearing about it at that time.

338
But rather than having it formalized, certainly when it comes to the expectation that Union will deal fairly with other parties or will extend the same offer, we have no jurisdiction, as we've made clear in our decision on the standing issues. We have no jurisdiction to do that, so I don't think we can put that on our issues list.

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When it comes to how it's going to apply in individual cases or small groups of participants, I think that we should deal with that if and when the problem arises, rather than as an issue relating to the evidentiary phase in the hearing.

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MR. VOGEL: I think that makes sense.

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MS. SPOEL: But you are free to, if and when there is a problem, you're certainly free to bring it to our attention.

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MR. VOGEL: That makes eminent good sense, Madame Chair, it addresses my concern and I think that's fair enough. It's really an implementation type of concern and it certainly wouldn't be something that we would be filing evidence on or asking IRs about or whatever. So I think that I'm prepared to withdraw it as a requested issue.

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MS. SPOEL: Okay, thank you.

Ms. Jackson, I assume that you're -- 344

MS. JACKSON: Your observations are exactly what -- cogently express why I didn't want it on the issues list and I'm content. 345

MS. SPOEL: So we will leave that off the list, but keeping in mind, of course, that you're always free to bring up difficulties with implementation, should there be any, hopefully there won't. 346

MR. VOGEL: Thank you, Madame Chair. 347

MS. SPOEL: All right. Now, Mrs. Lang, I wonder if we were to take a short break, if the parties might be able to come up with some wording that will satisfy everyone's concerns and we can sort of get this wrestled to the ground today? Would that be perhaps an appropriate thing to do, and then maybe some wording can be agreed upon with Mrs. Lang to make sure her issues are clearly identified on the list as well? Would that be a good approach? 348

MR. McCANN: I think it seems like a very good approach, Madame Chair. 349

MS. SPOEL: Why don't we take a 20-minute break and return at twenty to four, and we'll try and wrap things up then. I think most things are agreed upon. 350

Thank you. 351

--- Recess taken at 3:20 p.m. 352

--- On resuming at 3:40 p.m. 353

MS. SPOEL: Thank you. 354

Mr. McCann advises us that everybody has been able to hold a satisfactory issues list. Is there some scribbled on copy or somebody who can tell us what the changes are? 355

MR. McCANN: Yes, I think Ms. Jackson could address the changes with regard to Mrs. Lang. 356

MS. SPOEL: Thank you. 357

MS. JACKSON: Yes. Mrs. Lang very strongly would prefer to have her issue listed separately from everyone else's, and for ourselves and I think for Mr. Vogel, we're content with that. And the proposal then would be that we list, as a new item, number 3, after term and before "costs" the following 358

review of compensation for residual gas for Mrs. Lang of Waubuno Pool. That's W-a-u-b-u-n-o Pool.

The other thing that Mrs. Lang raised with us is her very strong preference to be able to address her issue at the beginning of the hearing rather than having to wait through everybody else's issues. And again, speaking for Union, we're certainly content with that. And I spoke to my friend, Mr. Vogel, he is as well.

So we might leave with that with the Board, but if the Board is able to give Mrs. Lang that comfort, I think she would be relieved.

MS. SPOEL: I think we have no difficulty with that Mrs. Lang, and are you content with the wording as put forward by Mrs. Jackson?

MRS. LANG: Yes, I'm very happy, and thank you so much.

MS. SPOEL: Thank you.

All right. And then we understand that the proposed issue 1.2 has now been incorporated into issue 1.1 as 1.1.4? Mr. Vogel?

MS. JACKSON: Five.

MS. SPOEL: Five, 1.1.5.

MS. JACKSON: Which is lump sum payments for landowners without leases?

MR. VOGEL: I think it should actually be 1.1.4 and what was 1.1.4 now becomes 1.1.5.

MS. JACKSON: I'm content.

MR. VOGEL: Because that would...

MS. SPOEL: That's fine. Either is acceptable. And the proposed issue 3, will not be listed as an issue on the issues list.

I think then that concludes the proceeding for today. Thank you to counsel and to Mrs. Lang for your helpful submissions.

MR. VOGEL: Madame Chair, if I could. There's just one additional matter I just want to raise with you and it's really a matter on which I require some direction from the Board.

As you're probably aware, there was a cost eligibility order made back in September of 2000. The LCSA applicants were determined to be eligible for a cost award. And I'm just seeking direction, really, today from the Board as to whether the Board considers it appropriate, at this stage in the proceeding, to consider an interim cost award?

As you're probably aware, the application has been pending for three years, and after the Century Pools Phase II issues were consolidated, there is substantial time and effort and experts were engaged in order to provide the amended application which is before you. And so as I say, for today, I'm just really seeking direction from the Board as to whether it would be appropriate to raise the issue of interim costs and it might be something that the Board will want to consider in a Procedural Order.

MS. JACKSON: With the greatest of respect, Madame Chair, that is the first I've heard of it and I would -- I hope this isn't an intimation of the way things will be happening in the future, and I'm sure it isn't.

I think if there were ever to be brought such a motion, it would be appropriate to bring it on proper notice and on materials and I can tell you that I expect my instructions will be to oppose it, but since it's the first I've heard about it, I'm not in a position to deal with it today.

MR. VOGEL: I'm certainly not making a motion today either, Madame Chair. I think I indicated clearly I'm just seeking some direction from the Board as to whether it's something that might be raised at this time or not?

MS. SPOEL: Well, it's the first we've heard of it as well, Mr. Vogel, and I don't think we're in a position -- we don't have any materials, we're not really in a position to deal with it today. If you wanted to bring such an application, I think you should address it in writing on proper notice to the parties and we would deal with it in due course, if, as and when we receive it. But it's really not something that we can deal with this afternoon.

MR. VOGEL: Thank you, Madame Chair.

MS. SPOEL: Is there any other matters before we adjourn?

MR. McCANN: Could I just ask counsel and Mrs. Lang perhaps to stay for a moment so we can talk about some scheduling matters after the hearing is completed. Thank you.

MS. SPOEL: Anything else? Thank you very much. And have a good afternoon.

--- Whereupon the hearing adjourned at 3:45 p.m.