



EB-2008-0075

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

AND IN THE MATTER OF application by Union Gas Limited
and Tipperary Gas Corp. for an order to vary certain
conditions of Board's Order EB-2007-0159.

BEFORE: Gordon Kaiser
Vice Chair and Presiding Member

Paul Sommerville
Member

DECISION AND ORDER

By letter dated March 27, 2008, Union Gas Limited ("Union") requested that the Board vary two of the Conditions of Approval related to certain operating plans and procedures (the "Conditions") set out in the Decision with Reasons (EB-2006-0018/EB-2006-0159/EB-2006-0279) which was issued to Tipperary Gas Corp. ("Tipperary GP") on February 6, 2007.

In a separate proceeding, on December 24, 2007 the Board approved Union's proposal to acquire 75% voting securities of Tipperary GP pursuant to section 43(2)(a) of the *Ontario Energy Board Act* (the "Act") (EB-2007-0837). Tipperary GP is the general partner of Huron Tipperary Limited Partnership I ("Tipperary LP"), which owns the storage rights to land and facilities in the Tipperary North and South Storage Pools located in the Township of Goderich (the "Storage Pools"). Tipperary GP is a storage company as defined in the Act. Tipperary GP will remain the sole general partner under this arrangement.

On April 8, 2008, Tipperary GP and Union (the “Applicants”) confirmed by a joint letter to the Board that Tipperary GP adopted the application filed by Union on March 27, 2008 and requested that the Board treat it as a joint application.

The Application

The Conditions which are the subject of this Application are as follows:

1.1.2 Prior to commencement of any injection, storage or withdrawal operations, Tipperary shall complete and file with the Board, the Ministry of Natural Resources, and all Parties to these proceedings, the following plans and procedures as required by CSA 341.1-02:

1.1.2.1 Operations and Maintenance Procedures (s. 10.1.1)

1.1.2.2 Emergency Response Plan (s. 10.1.2) and thereafter comply with any and all on-going obligations as required in respect of such procedures and plans pursuant to CSA Z341.1-02 or any successor version thereto.

The Applicants requested the Board’s approval in allowing Union to utilize its existing Operations and Maintenance Procedures (“O&M Procedures”) and Emergency Response Plan (“ERP”) as the operator of the Storage Pools.

The Applicants also requested an interim order permitting Union to operate the Storage Pools in the same manner and pursuant to the same procedures and emergency response practices governing Union’s operation of the other 19 storage pools in Ontario it controls, until such time as the Board can make a final determination on the request to vary the Conditions

Status of the Operation of the Storage Pools

Tipperary GP is authorized by Board Orders (EB-2006-0018/EB-2006-0159/EB-2006-0279) to operate the Storage Pools and it holds Well Licences issued by the Ministry of Natural Resource to operate the Storage Pools.

The Board's Decision with Reasons EB-2007-0837 required that all of the conditions attached to the Board Orders EB-2006-0018/EB-2006-0159/EB-2006-0279 are to be implemented by Tipperary GP even though it has contracted out the day to day operation of the Storage Pools to Union.

On April 16, 2008 by way of Procedural and Interim Order No. 1 ("Procedural Order") the Board granted a permit to Union and Tipperary GP for the commencement of the operation of the Storage Pools by Union in the manner Union operates 19 other storage pools in Ontario, until such time as the Board makes a final determination on the Application.

On April 21, 2008 Union on behalf of Union and Tipperary GP asked the Board for leave to operate the Storage Pools as per Condition 1.5 of the Board's Order to Inject, Store and Withdraw Gas from Storage Area (EB-2006-0159).

The Condition reads as follows:

- 1.5. *Tipperary shall not operate the Tipperary Pool above a maximum allowed operating pressure representing a pressure gradient of 15.8 kPa/m. Tipperary shall operate the Tipperary Pool at a pressure not greater than the discovery pressure 400 psig (2,750kPag), until the conditions of section 7.5.2. of CSA Z341 are satisfied and without the leave of the Board.*

On May 1, 2008 the Board issued a letter to Union and Tipperary GP confirming that the requirements of section 7.5.2. of the CSA Z341 have been satisfied by Tipperary GP and that the Board was satisfied that the Storage Pools could be operated above discovery pressure.

Proceeding

All of the registered intervenors in the proceedings EB-2006-0018/EB-2006-0159/EB-2006-0279 and EB-2007-0837 were defined as Parties in this proceeding.

The Procedural Order set a schedule for all Parties to make written submissions to comment on, support or oppose the Application and for the Applicants to respond to any written submissions by the Parties.

The Procedural Order also directed Union and Tipperary GP to immediately send a joint letter to all the Parties, Ministry of Natural Resources and the landowners indicating that Union would be the operator of the Storage Pools and that it would apply Union's ERP and O & M Procedures in operating the Storage Pools.

Written submissions were received from the MNR; Tipperary Storage Landowners Association ("TSLA"); Mr. Lenus Yeo; Ms. Marilyn R. Broadfoot; and Huron County Federation of Agriculture ("HCFA"). On May 1, 2008 the Applicants filed reply submissions.

The Applicants Position

The Applicants submitted the following grounds for approving the request to vary the Conditions:

- The Conditions were imposed on Tipperary GP as it did not have any proven experience in operating a storage pool.
- Union has extensive experience and a good record in the development and operation of storage pools.
- Union has an existing ERP and O & M Procedures for its 19 storage pools. None of the 19 storage pools operated by Union are subject to the Conditions imposed on Tipperary GP.
- Union has committed to make available for review to the affected landowners its ERP. Union noted that, as a rule, emergency response plans are not made public as this may compromise the purpose of emergency response plans.
- Union's O & M Procedures are commercially sensitive materials and it is not appropriate to make them publicly available.

Position of the Ministry of Natural Resources

The MNR submitted that the O & M Procedures and the ERP should be completed for the Tipperary Storage Pool.

The MNR noted that CSA Z341 requires that operation, maintenance and ERP be completed for the storage of hydrocarbons in underground formations. Such procedures are particularly important in this situation because the Tipperary Pool is not typical of Union's other storage pools: its discovery pressure was 425 psia and the proposed operating pressure is 1096 psia; this represents a 250% increase in pressure. For the above reasons the MNR submitted that O & M Procedures and an ERP are necessary to address public safety, environmental and resource management concerns.

Recognizing Union's position with respect to commercial and confidentiality concerns, the MNR proposed that a summary of the procedures and the ERP be filed with the Ministry, the Board and the parties to the proceeding (the "Summary"). The MNR proposed that at a minimum, the following issues should be addressed in the Summary:

- A schematic of pressure and flow diagram, instrumentation and equipment. This includes the leak detection, high/low flow pressure alarms and emergency shutdown systems.
- Confirmation that procedures are available on site for the operating and maintenance personnel.
- For this particular application, evidence was presented regarding the proposed increase in injection pressures to bring the pool to its new design pressure. The operation procedure and any changes to the procedure for this operation should remain public.
- Confirmation that the storage pools are operated and maintained by qualified personnel who have been trained in the operating and maintenance procedures. Also that procedures are reviewed and updated as per CSA Z341.
- Given the information that Union Gas as the new operator now intends to operate the facility from a remote location, the Summary should include information with respect to what additional monitoring and enhanced security methods will be employed- e. g. fencing, remote video monitoring, security patrol services, daily visit by operations personnel?

- The maintenance procedure regarding the frequency of well testing for mechanical integrity as per CSA Z341 and the frequency of pipeline inspection in accordance with CSA Z662.
- A plan to deal with situations such as spills, leaks, blowouts and injuries and the contact information for such emergencies. A procedure on who should be contacted and the contact information in the event of an emergency- internal to Union as well as the local, municipal and provincial agencies should be developed and communicated.

Positions of Other Parties

TSLA submitted that conditions 1.2.1.1 and 1.2.1.2 (set out above) should be fully implemented by Tipperary GP and its shareholders (Union Gas). TSLA argued that the Board imposed similar conditions on Market Hub Partners Canada L.P. (“MHP”) when it sought approval to develop the St. Clair gas storage pool. MHP was instructed to publicly file O & M Procedures and an ERP prior to the commencement of injection, storage and withdrawal operations. TSLA acknowledged that Union met with the affected landowners and explained the process Union would follow in an emergency situation.

Ms Marilyn R. Broadfoot submitted that it would not be in the best interest of the landowners or the Municipality of Central Huron to make changes to the Conditions.

Mr. Lenus Yeo opposed the Conditions being varied. Mr. Yeo was particularly concerned about safety implications of operating the storage pool from a remote location and not having daily visits to the pool by “qualified personnel”. In his submission, Mr. Yeo seemed to support the MNR’s proposal: “In viewing the MNR response to this Procedural Order they present a more rational approach for the security and operation of the Tipperary Storage Pool with the public interest in mind.”

The Huron County Federation of Agriculture opposed the Conditions being varied. The HCFA stated that the specific aspects of the Storage Pools lead to the conditions and that it would not be in the best interest of the landowners to change the conditions at this time.

Reply by the Applicants

The Applicants confirmed that Union had already completed the O & M Procedures and an ERP and that conditions 1.2.1.1 and 1.2.1.2 would be fulfilled in accordance with the CSA Z341.

The Applicants agreed to prepare and file the Summary, as proposed by the MNR, and asked that the Board grant at least 30 days for Union to complete the Summary.

Regarding the public filing of the O & M Procedures, and especially the ERP, the Applicants maintained that public disclosure would not enhance the safe operation of the Storage Pools and may even reduce safety and “could result in interference with the execution of the plan”. The Applicants submitted that the MNR proposal for “the filing of a summary of the Emergency Response Plan, including all relevant contact information would better serve the public interest”. The Applicants noted that Mr. Yeo supported the proposal of the MNR.

The Applicants noted that Union had not been previously required to publicly file this kind of information and that operating and maintenance procedures should remain confidential because Union’s expertise should not be accessible to Union’s competitors.

TSLA and Mr. Lenus Yeo, as directly affected landowners, asked to be awarded cost eligibility status. The Applicants stated that it did not object to these cost award eligibility requests.

Board Findings

The Board has reviewed the evidence of the Applicants and submissions of the Parties and has decided to grant the joint request to Union and Tipperary GP that Tipperary GP be exempt from the fulfillment of conditions 1.1.2.1 and 1.1.2.1 in Board’s Order EB-2007-0159 as long as Union is the operator of the Storage Pools.

The Board however will not exempt Union from the fulfillment of conditions 1.1.2.1 and 1.1.2.1. Union will be exempt from publicly filing its O & M Procedures and the ERP. The Board notes that public filing of complete O & M Procedure may include commercially sensitive information and may economically

disadvantage Union relative to its storage development competitors. The Board will not require the public filing of the complete ERP. To do so may be counterproductive to safety and emergency response requirements.

The Applicants confirmed that Union already completed O & M Procedures and the ERP in conformity with the CSA Z341. The MNR, as the agency with authority and expertise to oversee the CSA Z341 implementation and technical and safety aspects of gas storage operation in Ontario submitted that a Summary of the O&M Procedures and the ERP would be sufficient.

The Board will require Union to prepare the Summary of the O& M Procedures and the ERP including the issues defined by the MNR in their submission dated April 25, 2008. The Board will also order Union to make the Summary available for public review.

Union will be given 30 days from the date of this decision and order to prepare and file the Summary with the Board, MNR, the Parties in this proceeding and the landowners in the designated storage area.

THE BOARD ORDERS THAT:

1. Tipperary Gas Corp. is exempt from fulfilment of conditions 1.1.2.1 and 1.1.2.1 in Board's Order EB-2007-0159 subject to Union Gas Limited acting as the operator of the Tipperary North and South Storage Pools located in the Township of Goderich.
2. Union Gas Limited shall adhere to conditions 1.1.2.1 and 1.1.2.1 in Board's Order EB-2007-0159 by way of preparing a Summary of its Operations and Maintenance Procedures and Emergency Response Plan. The Summary shall cover at a minimum the following:
 - a. A schematic of pressure and flow diagram, instrumentation and equipment. This includes the leak detection, high/low flow pressure alarms and emergency shutdown systems.
 - b. Confirmation that procedures are available on site for the operating and maintenance personnel.

- c. For this particular application, evidence was presented regarding the proposed increase in injection pressures to bring the pool to its new design pressure. The operation procedure and any changes to the procedure for this operation should remain public.
 - d. Confirmation that the operation is operated and maintained by qualified personnel who have been trained in the operating and maintenance procedures. Also that procedures are reviewed and updated as per CSA Z341.
 - e. Given the information that Union Gas as the new operator now intends to operate the facility from a remote location, the Summary should include information with respect to what additional monitoring and enhanced security methods will be employed- e. g. fencing, remote video monitoring, security patrol services, daily visit by operations personnel.
 - f. The maintenance procedure regarding the frequency of well testing for mechanical integrity as per CSA Z341 and the frequency of pipeline inspection in accordance with CSA Z662.
 - g. A plan to deal with situations such as spills, leaks, blowouts and injuries and the contact information for such emergencies. A procedure on who should be contacted and the contact information in the event of an emergency – both internal to Union as well as the local, municipal and provincial agencies should be developed.
3. Union Gas Limited shall file the Summary no later than 30 days from the date of this Decision and Order and file it with the Board, the MNR, the Parties in this Proceeding and all the landowners within the designated storage area of Tipperary North and South Storage Pools.
4. Eligible intervenors who seek an award of costs incurred to date shall file their cost submissions in accordance with the *Practice Direction on Cost Awards* with the Board Secretary and with Union Gas Limited and Tipperary Gas Corp. within 15 days of the date of this Decision. Union Gas Limited and Tipperary Gas Corp. may make submissions regarding

the cost claims within 30 days of the Decision and the intervenors may reply within 45 days of the Decision. A decision and order regarding cost awards will be issued at a later date. Upon receipt of the Board's cost award decision and order, Union Gas Limited and Tipperary Gas Corp. shall pay any awarded costs with dispatch.

5. Union Gas Limited and Tipperary Gas Corp. shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

DATED at Toronto, July 2, 2008

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary