



RP-2005-0025
EB-2005-0474
EB-2005-0475
EB-2005-0476

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

AND IN THE MATTER OF applications by Union Gas Limited
for approval of the parties to, the period of, and the storage
that is the subject of separate long-term gas storage contracts
between Union Gas Limited and Duke Energy Marketing
Canada Corp., Union Gas Limited and NJR Energy Services
Company, Union Gas Limited and Suncor Energy Products
Inc.

BEFORE: Paul Vlahos
Presiding Member

Bob Betts
Board Member

Paul Sommerville
Board Member

DECISION AND ORDER

On August 25, 2005, Union Gas Limited applied for approval of the parties to, the period of, and the space for gas storage that is the subject of three agreements, between Union Gas Limited and Duke Energy Marketing Canada Corp. (“DEMA”), NJR Energy Services Company (“NJR”), and Suncor Energy Products Inc. (“Suncor”).

The DEMA application sought approval for a contract which would provide for 1,582,584 GJ (1.5 Bcf) of firm storage space to DEMA from April 1, 2006 to

March 31, 2009. The proposed contract was the result of an open season conducted in June 2005.

The NJR application sought approval of a contract which would provide for 1,582,584 GJ (1.5 Bcf) of firm storage space to NJR from April 1, 2006 to March 31, 2009. This contract was also the result of the open season that Union conducted in June 2005.

The Suncor application sought approval of a contract which would provide for:

- a) 150,960 GJ (0.14 Bcf) of firm storage space to Suncor Sarnia Regional Cogeneration Project ("SRCP") from November 1, 2005 to October 2012.
- b) 645,484 GJ (0.61 Bcf) of firm storage space to Suncor (Hydrogen) from April 1, 2006 to October 31, 2020.
- c) 190,723 GJ (0.18 Bcf) of firm storage space to Suncor (Ethanol) from April 1, 2006 to October 31, 2015.

Union's applications were made pursuant to subsection 39(2) of the *Ontario Energy Board Act*, which allows the Board to give approval without a hearing. Union requested that a hearing not be held, and that certain commercial terms in the contracts be held in confidence as per the Board's Rules of Practice and Procedure on the basis that the contracts contain information that is commercially sensitive and will harm the contracting parties' competitive positions. The confidential information pertains largely to the pricing provisions in the Duke and NJR contracts and certain interruptible pricing under Rate T1 and customer-specific information in the Suncor contract.

In the Board's Natural Gas Forum Report, dated March 30, 2005, the Board indicated that it will review the issue of whether it should refrain from regulating some or all matters relating to gas storage by the end of 2006 ("the Storage Review"). In view of that prospective Storage Review, the Board identified the need to determine if any parties, other than Duke, NJR, and Suncor, would be affected by the outcome of the applications and whether the Board should or should not proceed without a hearing. The Board combined the three applications and assigned Board File No. RP-2005-0025/EB-2005-0474/EB-2005-0475/EB-2005-0476 to the combined proceeding. Notice of Applications for the combined proceeding was issued on October 5, 2005 and was served on the all the participants in the Natural Gas Forum and Union's 2006 rate hearing.

In the Notice, the Board noted Union's evidence that as of September 2004 (prior to the proposed contracts), Union's total storage capacity in Ontario was 161,637 TJ (151 Bcf). Of this amount, 91,561 TJ (85.5 Bcf) is committed to in-franchise customers and 70,076 TJ (65.4 Bcf) to ex-franchise customers, of which 47 TJ (0.04 Bcf) of capacity is for short term contracts. With the proposed contracts, an additional 987 TJ (0.93) of capacity would be committed to in-franchise long term contracts and 3,165 TJ (3 Bcf) for ex-franchise long term contracts. The Notice also set out Union's forecast to 2008 for total storage availability and utilization by in-franchise needs and ex-franchise contracts.

The Notice invited interested parties to file written submissions addressing "whether and how they are materially affected by the application(s), and the merits of the application(s)".

Submissions by Parties

The Board received submissions from Industrial Gas Users Association ("IGUA"), TransCanada PipeLines Limited ("TCPL" or "TransCanada"), and NJR Energy Services Company.

IGUA urged the Board to continue to require that Union provide storage service to its in-franchise customers under cost-based rates, and that this requirement would be undermined if the subject applications condone market based storage rates. IGUA further argued that the Board is still considering storage services for electricity generators under the Natural Gas Electricity Interface Review, and the contracts should only be approved if they use existing Board approved rates. IGUA also urged that the Board assure that Union is not overselling storage services to the detriment of its in-franchise customers.

IGUA did not oppose approval of the DEMA and NJR applications based on its understanding that these customers are ex-franchise and have agreed to pay above Union's cost based storage rates. IGUA also did not oppose approval of the Suncor contract if it were on the basis of the existing Board approved T1 Rate Schedule.

NJR Energy Services supported the approval of the contract to which it is a party, indicating that it will enhance its effectiveness in the market, and will serve the public interest.

TCPL stated as follows:

“As a major transporter of natural gas in Canada, TransCanada may be materially affected by any decision arising out of this proceeding and the impact such decision may have on future TransCanada proceedings. Furthermore, TransCanada is a participant in the Natural Gas Forum (NGF) and submits that the subject matter of the Applications may be relevant to TransCanada’s interests in the NGF.

TransCanada requests the right to participate in all aspects of the Applications and to receive all prefiled material and any further notices or other material that may be issued or filed in connection with this proceeding. TransCanada further requests the right to respond to any issues which may raised by any interested parties, either prior to or during the course of the proceeding.”

In reply to IGUA’s submission, Union confirmed that the negotiated prices for the DEMA and NJR contracts do exceed costs and that the Board-approved T1 rate schedule will be used to service the Suncor contract. In reply to TCPL’s submission, Union noted that TCPL made no submission regarding the merits of the applications.

Board Findings

Under section 39(2) of the *Ontario Energy Board Act*, the Board can approve applications for gas storage contracts without a hearing. The criteria for proceeding without a hearing under this section are not set out in the legislation. The strictest test that may arguably be applied would be section 21(4)(b) of the *Ontario Energy Board Act*, which states that the Board may proceed without a hearing if it determines that no person would be adversely affected in a material way by the outcome of a proceeding. Having considered the evidence, and submissions of parties that responded to the Notice, the Board has determined that a hearing is not required.

The Board finds that given the nature and specifics of the applications, no party will be adversely affected in a material way by the outcome of the applications, and the Board’s ability to consider the issues which will be subject to the Storage Review or the Natural Gas Electricity Interface Review will remain unimpaired. The Board therefore has

determined that it should proceed with the current applications without a hearing.

The Board has found TCPL's submission lacking in focus and specifics and not helpful to the Board's deliberations "whether and how they [parties] are materially affected by the application(s), and the merits of the application(s). The Board also notes that TCPL's submission was the same as in the previous case dealing with Union's two applications for gas storage contracts. The Board expects that all parties in the future will attempt to be helpful by addressing the specifics of the Board's inquiry as stated in the applicable Notice.

The Board accepts Union's submission that the contracts would not affect Union's ability to meet future gas storage needs for its in-franchise customers. The Board also notes Union's confirmation that the negotiated prices for the DEMA and the NJR contracts exceed Union's costs of providing the service and that the Suncor contract is priced under the Board-approved T1 rate schedule.

For all of the reasons above, the Board approves Union's current applications. The Board also finds that it is in the public interest not to disclose the pricing information contained in the DEMA and NJR contracts and certain interruptible pricing and customer-specific information contained in the Suncor contract, as requested by Union. Also, the "Capstone agreement" filed with the Board in response to Board Staff's request shall also be excluded from the public record.

IGUA requested that it be awarded costs for this proceeding as well as the previous proceeding dealing with the Gaz Metro L.P. and Nexen Marketing gas storage contracts and that it should be able to resolve the amount of its claims with Union without requiring the intervention of the Board's Assessment Officer. The Board awards IGUA 100 percent of its reasonably incurred costs and accepts IGUA's suggestion to work with Union in determining the reasonable amount of costs without the involvement of the Board's Assessment Officer. Should there be no agreement by the two parties, it would be open to either party to approach the Board.

THE BOARD ORDERS THAT:

The Board approves the proposed contracts and the parties to, the period of, and the storage space that is the subject of the contracts (Contracts LST044, LST043 and Contract ID 6917) attached to this Decision and Order as Appendices "A", "B" and "C", respectively. Union shall file original signed or certified copies of the executed contracts with the Board as soon as they are available.

DATED AT Toronto, October 28, 2005.

ONTARIO ENERGY BOARD

Original Signed By

Peter H. O'Dell
Assistant Board Secretary

**APPENDIX "A" TO
BOARD DECISION AND ORDER
IN THE MATTER OF RP-2005-0025/EB-2005-0474**

Being a copy of a contract for storage services
from Union Gas Limited, identified as Contract No. LST044
from which Schedule "A" containing pricing information is withheld and not currently
available to the public.

APPENDIX "B" TO
BOARD DECISION AND ORDER
IN THE MATTER OF RP-2005-0025/EB-2005-0475

Being a copy of a contract for storage services
from Union Gas Limited, identified as Contract No. LST043
from which Schedule "A" containing pricing information is withheld and not currently
available to the public.

APPENDIX "C" TO
BOARD DECISION AND ORDER
IN THE MATTER OF RP-2005-0025/EB-2005-0476

Being a copy of a contract for storage services
from Union Gas Limited, identified as Contract ID 6917
from which certain interruptible pricing and customer-specific information is withheld and
not currently available to the public.