

*Excerpt from the Transcript EB-2005-0551 dated September 7, 2006, page 166 line 7 to page 175 line 28.*

**DECISION:**

MR. KAISER: Thank you. There's one outstanding matter we'd like to deal with, that with your indulgence, will take a few moments. And that relates to the request by Market Hub Partners for a decision on certain core issues, which we'll deal with at this point.

Market Hub Partners Canada has requested an expedited decision on three issues which relate to the Partnership's proposed St. Clair storage operations. These issues have arisen in this proceeding, the Natural Gas Electricity Interface Review, as a result of a reference from another proceeding.

Market Hub filed an application before the Board some time ago for approval of market-based rates that will govern gas storage contracts to be entered into by the Partnership. That proceeding was adjourned, and then subsequently, on June 30th, the Partnership requested it be reactivated.

The Board issued a notice of reactivated proceedings on August 11<sup>th</sup>, referring these three core issues to this proceeding. Market Hub, as we know, has participated and intervened in this proceeding, has filed evidence, and argument.

By way of background, Market Hub Partners is a Partnership that is wholly owned by subsidiaries of Duke Energy Corporation. The Partnership was established to develop natural gas storage facilities in Southwestern Ontario near

Dawn, where it intends to offer merchant storage service at market-determined prices directed to wholesale customers.

The Partnership is currently developing its St. Clair Pool, which will provide 1.1 Bcf of working gas capacity.

As indicated, Market Hub has reactivated its application to the Board for a number of regulatory approvals related to that facility, including the determination regarding market-based pricing.

Market Hub also intends to develop, through a partnership, a further 5.3 Bcf of working gas capacity at the Sarnia Airport Pool and has also indicated it will seek development opportunities to increase its working gas capacity to 10 Bcf by 2010.

The request by Market Hub for an expedited decision on these three core points was set out in its July 20th letter to the Board, and it was also addressed in some detail in Market Hub's August 11th written argument.

Specifically, the three questions are as follows. Market Hub has asked the Board to find that Market Hub:

One, cannot exercise market power; two, be granted authority to charge market-based rates for its services; and three, be allowed flexibility to contract for services without requiring approval of individual contracts, provided that Market Hub operates within a base set of service terms and conditions approved by the Board.

So those are the three issues that are before us today.

It should be pointed out that Market Hub has indicated that the term "authority to charge market-based rates" means the authority to charge rates within the Union Gas C1 rate

range, which would be in effect from time to time.

The Partnership had previously asked that a decision on these core points be reached by the end of August in order to commit to necessary contractors, to conduct its open season, and to continue the regulatory approval process.

It's important to note that Market Hub has not asked the Board to make an expedited decision about whether it will or will not forbear from regulating storage prices charged by Market Hub Partners or any other storage operator. This is set out in the August 11th written argument, which I will quote:

"To be clear, Market Hub Partners Canada's request for an expedited decision on the Core Points is intended only to provide Market Hub Partners Canada with the confidence to move the St. Clair project plans forward such that the incremental storage services can be offered to the market commencing in 2007. The request to an expedited decision does not substitute in any way for the forbearance decision ..."

And that appears at page 29 of the Market Hub argument.

Before reaching the decision on this, it's useful to set out the position of the parties on this issue.

The final arguments of the parties on August 28th and 29th dealt with a number of issues in this proceeding. Although most of the intervenors did not deal in any detail with the Market Hub request, there were, however, four parties that did make some comments.

First, the Board hearing team took the position that because of MHP's status as an affiliate of Union, a decision on

the core points was, in effect, a decision on the merits of Union's position. Accordingly, the Board hearing team concluded that an expedited decision would not be appropriate.

IGUA and AMPCO said that Market Hub Partners cannot exercise market power by itself and concurred with granting Market Hub Partners the authority to charge market-based rates.

With respect to the issue of contract approval, Mr. Thompson, the counsel for IGUA, raised the question as to whether waiving the Board's approval of storage contracts - which was the third point Market Hub asked the Board to address - would be consistent with the Board's treatment of contracts entered into by Tribute Resources, an independent Ontario storage developer that received approval to charge market-based rates. And that decision is the Board's decision of June 17th of this year, the reasons for which were issued on August 25th.

The final argument of the School Energy Coalition did not address Market Hub's core points directly but did state that, in its view, Market Hub, because they're affiliated with Union, would have market power.

And finally, London Property Management Association and the Wholesale Gas Services Purchasers Group argued that prices charged for utility affiliate storage should not be regulated.

I'd like to deal first with this question of market power. And that, as I have said, is one of the core points.

The gas storage capacity that Market Hub proposes to develop in Ontario is relatively small. The St. Clair Pool as proposed would have a capacity of 1.1 Bcf. The Sarnia Airport Pool as proposed, which may be in service in 2008, would have a capacity of 5.3 Bcf.

In the Board's view, even on the narrowest definition of a geographic market as advanced in this case, the total capacity of these two pools would be less than 3 percent of the market capacity. The Board believes it can easily conclude that Market Hub Partners, if considered separate from Union, cannot wield market power today or even when its proposed storage pools become operational.

The Board also notes that, with the exception of Schools, no party has explicitly asserted that Market Hub will have market power.

Market Hub and Union Gas are affiliates and are under common control. The Board in this hearing has heard considerable evidence that affiliate relations can affect market power and the determination of market power.

A number of parties have referred to the FERC regulations in this area, which have been recently reconfirmed by Order No. 678.

The relevant part of those regulations states as follows:

"Capacity (transportation, storage, LNG, or production) owned or controlled by the applicant and affiliates of the applicant in the relevant market shall be clearly and fully identified and may not be considered as alternatives competing with the applicant. Rather, the capacity of an applicant's affiliates is to be included in the market share calculated for the applicant."

That's a reference to the FERC regulation paragraph 284.503(b)(4).

If the Board were to follow FERC policy in this particular case, the Board would be first required to make a determination as to whether Union has market power, an assessment it has not yet made, before it could determine whether Market Hub had market power.

This is the concern that appears to be expressed by the Board hearing team and Schools in arguments that they have filed.

Given the specific circumstances of Market Hub as outlined above, the Board has concluded that it's not necessary to combine Market Hub's proposed storage capacity with Union's capacity to determine whether Market Hub lacks market power.

Market Hub Partners is proposing to develop only a small amount of new storage capacity. It has no existing customer base and, unlike Enbridge and Union, does not have any in-franchise or captive customers.

The Board will require Market Hub to offer its storage service to the market in a non-discriminatory fashion, to adhere to the Affiliate Relationships Code for gas utilities, and, as volunteered by Market Hub, to file confidentially with the Board information on all of its storage transactions.

The Board is of the view that these requirements will minimize any concerns that Market Hub and Union Gas will be acting in concert. Accordingly, the Board finds that Market Hub partners cannot exercise market power.

Turning next to the issue of market-based rates, the Board in its NGF report stated - and this is at page 50 - that it will not fix cost-of-service rates for new storage developed by independent storage operators.

The Board has approved market-based rates for Tribute Resources, a new independent storage developer, and that's the decision I referred to earlier.

Given that the Board has determined that Market Hub cannot exercise market power, the Board finds it is appropriate to grant Market Hub the same treatment it has accorded Tribute.

The Board also notes that many of the parties argued that market-based rate authority would provide an appropriate stimulus for new storage development.

Accordingly, the Board will permit Market Hub Partners to charge market-based rates; that is, rates that are subject to the maximums set out in Union Gas' rate schedule C1.

The third issue relates to contract approvals and the request of Market Hub in that regard.

Section 39(2) of the OEB Act prohibits storage companies from entering into or renewing an agreement for gas storage unless the Board has approved the parties to the agreement, the period of the agreement, and the storage that is subject to the agreement.

Market Hub says that the process and time involved in obtaining these approvals is not consistent with the needs of a competitive market, particularly the short-term storage or transactional market. This is set out at page 27 of the Market Hub argument.

As a new market entrant with no existing customer base, Market Hub is understandably concerned about potential barriers to signing customers. Even if the time and cost of contract approval were minimal, the Board is not aware of any compelling public interest reason to pre-approve the storage contracts of

Market Hub Partners.

In the past, the Board has given blanket storage orders that effectively exempt storage operators from seeking the Board's pre-approval of storage contracts that meet certain conditions. The Board considered that approach in this case with respect to Market Hub Partners; however, in light of the Board's determination that Market Hub cannot exercise market power, the Board has decided that it can forbear from requiring pre-approval of MHP's storage contracts.

Again, the Board notes that there was general support for this approach by all parties to this proceeding.

The Board wants to stress, however, that this forbearance is only with respect to Section 39(2) of the OEB Act and only in respect of MHP. The Board has not yet made any determination as to whether to forbear from regulating storage rates or approving storage contracts more generally.

MHP's request to the Board referred to a base set of terms and conditions approved by the Board. The Board will require MHP to file its proposed standard terms and conditions in EB-2006-165, a proceeding that's currently underway with respect to the St. Clair project.

With respect to any contracts between Union and MHP, the Board will be engaged in this matter through its regulation of Union. The Board's Affiliate Relationships Code for Gas Utilities applies to the terms and conditions of those contracts. The Board will also have the ability to carry out a prudence review of such contracts as part of its regulation of Union.

And the Board will be considering, as part of its



deliberation on the issues in this case, whether to require pre-approval of storage contracts between regulated distributors and affiliates.

Now, I would add here that, in argument today, Mr. Smith has requested a clarification of the current ARC guidelines. This decision will not deal with that, but it will be dealt with in the main decision.

I trust that's satisfactory, Mr. Smith.

Finally, as to reporting requirements, as the Board considers the issues in this hearing, it will be considering reporting requirements for all storage operators. Several parties have advocated that the Board require storage operators to make public certain contract information and other data. Market Hub should be aware that this decision not to require Board approval of Market Hub contracts is not an indication that the Board has made any decision on the extent of reporting obligations of storage operators generally.

We would ask you, Mr. Smith, to prepare and file a draft Order in accordance with this decision, if possible, within 15 days.

MR. SMITH: Yes, sir.

MR. KAISER: Possibly earlier, and to distribute copies to your friends for comment.

That completes the Board's decision with respect to the Market Hub core issues.