

**ONTARIO ENERGY BOARD**

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

AND IN THE MATTER OF a proceeding initiated by the Ontario Energy Board to determine whether it should order new rates for the provision of natural gas, transmission, distribution and storage services to gas-fired generators (and other qualified customers) and whether the Board should refrain from regulating the rates for the storage of gas.

**Final Submissions of Tribute Resources Inc.**

August 28, 2006

## **Background**

Tribute Resources Inc. (“Tribute”) is a publicly traded junior oil and gas producer operating in the Ontario energy market. Among its various commercial and renewable energy investments and activities, Tribute is focused on developing underground natural gas storage pools in Ontario. In 2005, Tribute and Tipperary Gas Corp received Ontario Energy Board (“Board”) approval for designation of the 3.2 bcf Tipperary Gas storage facility near Bayfield, Ontario, which is currently under development. A further 9 bcf of storage development is under consideration by the company. Tribute and its affiliates are entirely unrelated to any regulated utility entity in Ontario or elsewhere.

## **Interest in the NGEIR proceedings**

Tribute intervened in the NGEIR proceeding to monitor the hearing with a view to ensuring that support for independent gas storage development remains intact (or at least not under attack) by hearing participants and the Board. From its review of the proceedings throughout, Tribute has not seen or heard anything in the evidentiary record that would suggest that there is not continued support for the ongoing evolution of independent or third party gas storage projects and a growing competitive market for the attendant competitive products and services. Therefore, Tribute limited its participation in the proceedings.

Tribute respectfully submits, however, that there are some areas of the evidentiary record, which might be enhanced from certain limited final observations and submissions it could make herein based on the record and its own experience in the energy market. Tribute will therefore limit its submissions to specific issues as they relate to the environment for developing gas storage projects.

## **Ontario has a vibrant competitive natural gas market place**

There can be no doubt that after the introduction of deregulation in Ontario’s downstream gas market twenty years ago, the rapid evolution and development of customer service offerings reflected the objectives set out by the signatories of the Halloween Agreement and the Western Accord. The hallmark of the early success of that market was the proof that almost overnight there were many active buyers and sellers across not only Canada,

but across the entire continent. Deeply rooted regulatory principles such as open access and non-discriminatory rate treatment for system gas and direct purchase customers alike made it possible for the market to flourish, with periodic nurturing from policy makers and regulators.

Enbridge Gas Distribution Inc (“Enbridge”) (then Consumers Gas) as well as Union Gas Limited (“Union”) were pioneers in developing various direct purchase services to meet customer demands and regulatory requirements. By 1990, the Ontario gas utilities were entering into previously unknown gas transactions with their larger customers and marketers/brokers. The APPRO and utility evidence in NGEIR underscores the need to continually innovate the utility services offered in order to meet new customer demands for coordinated gas dispatch for electricity generators. Similarly, Tribute would respectfully submit that similar requirements for innovative and integrated utility support services will ultimately be required by embedded storage developers, whether affiliated or independent.

Fast forward to where the energy market is today: it is submitted that the Ontario energy market is highly competitive and is very likely to remain so. As has been stated throughout this proceeding, an RFP for services and/or offerings attracts substantial interest from competitive contenders, which have myriad choices available to them. Contracting for services, including storage services, parking, loans, and all manner of short and long term hub transactions demonstrates that there is serious competition not only in Ontario, but in the entire Great Lakes basin region. It is this evidence of serious competition in a regional energy market, under the auspices of reduced regulation that drives Tribute and its investors to continue to have confidence in their investments and in their Business Plans.

### **Rate forbearance in favor of market-based rates for non-utility storage**

The Board has already moved into a forbearance mode when granting its approval for Tribute to negotiate its own market-based rates for the storage services it will offer, effectively mirroring the Union C1 rate. As the Board also understood from the evidence and argument filed by Market Hub Partners (“MHP”), the C1 range rate is wide enough to capture a final negotiated price from customers, which Tribute also believes will allow it to derive sufficient revenue to earn an acceptable return on the investments it makes. Tribute, as an independent storage company, is also not required to

file with the Board the contractual documentation it executes with its customers.

One of the key questions in this proceeding really remains as to whether the Board is wise to fully forbear on the rates (and ranges) that (non-utility) storage providers offer pursuant to section 29 of the *OEB Act*. And further, whether that specific forbearance is in the public interest, is a matter upon which the Board must deliberate.

Tribute submits that the Board can have strong confidence that it can forbear on regulating the rates for non-utility storage offerings because there is, as a matter of fact, not only sufficient, but substantial and robust competition for gas storage and secondary market services in the Ontario marketplace (See the evidence of Steve Acker at Tr. 13, p.16 – 23). Tribute makes this submission on the basis of its experience in launching/operating its own open season for its storage services, as well as on the basis of extensive management observations and notably, based on the testimony of three independent expert reports each supported by witnesses appearing in this proceeding: the reports of Concentric Energy Advisors, Navigant Consulting and Energy and Environmental Analysis Inc. The reports are clear that there is an active competitive market without concentrations of market power that would necessitate continued regulation.

To the extent that the Board forbears on this particular segment of its current regulatory mandate and if there is a subsequent customer complaint respecting market behavior, Tribute submits that there are complaint mechanisms available to unhappy customers. Customers may challenge inappropriate market treatment through either the Board's Compliance offices or those of the federal Competition Bureau. But most importantly for the Board's deliberations on forbearance, is the fact that the evidence to date with respect to ex-franchise market-based service offerings, is that there have been no complaints. Not only is that submitted to be strong evidence of an active competitive market, but it speaks to a workable, functioning market, which is viewed as fair, accessible and transparent. That situation has been the case for 17 years since these types of services were initially offered in Ontario.

Tribute respectfully submits that the Board can, with confidence, lighten its regulatory burden by forbearing on regulating the rates (and rate-related services) of non-utility gas storage providers. Such forbearance

would be in the public interest as a supportable finding can be made that there is sufficient competition in the Ontario storage market. Tribute submits that the Board would continue its regulatory mandate over all other public health and safety issues as well as its statutory supervision of environmental issues surrounding infrastructure impacts.

It is respectfully submitted that whatever level of forbearance the Board ultimately decides to implement, consistency and stability in the Board's decision will be critical to the attractiveness of investors into these high risk projects. Regulatory consistency and stability are vital underpinnings of any investment cycle. As recent history demonstrates, the lack of political stability and consistency in the electricity sector, manifested by an interventionist and unpredicted rate freeze, followed by the withdrawal of potential new generators, who were on the verge of building commitments based on the first year results of an open market, caused investors to flee. No one in this proceeding raised this specter, but it is worth noting that storage developers need to reduce project risks where it is reasonable to do so.

### **Utility affiliates and the Affiliate Relationships Code (the "ARC")**

After the 2003 Designation Application was approved, Tribute recognized the need for as much regulatory clarity as possible in the various aspects of project development. It is submitted that removing unnecessary barriers and costly delays are two examples of obvious concerns; yet another potentially serious concern would be to ensure limited corporate advantages possibly bestowed on affiliates of utilities that are already engaged in the storage business.

MHP is one such affiliate of Union, which has been the subject of much debate in this proceeding. MHP and Union are already subject to the Board's ARC requirements. Tribute submits that it has confidence that the ARC requirements are presently sufficient to protect the competitive interests of affiliated and unaffiliated market players, without placing undue additional conditions on utilities and their affiliates. The Board already has considerable experience in regulating these entities and their interrelated and allocated costs (See the evidence of Cheryl Worthy at Tr. 13, p 14 – 15). Nothing new has been advanced in these proceedings, which causes Tribute additional concerns. In all of its storage development activities over the last 2.5 years, Tribute has not experienced any direct or inappropriate interaction

between Union and MHP, which causes it concern as it moves the Tipperary project forward.

However, if the Board experiences legitimate complaints through its Compliance Office, or becomes uncomfortable with respect to contracts and practices between affiliated companies, only as a fallback position, Tribute recommends that it may be appropriate for the Board to require a confidential filing of only those specific affiliated contracts. The Board always has the jurisdiction to control its own practices and procedures and, if at some future time, the ARC requires amendments, that process may be implemented at the time, based on some demonstrated need to revise it. Tribute respectfully emphasizes that the healthy functioning of the marketplace is premised on protection of commercially sensitive information from any kind of public or commercial subterfuge or access.

### **Enhancing the regulatory environment for incremental storage development**

Tribute respectfully submits that it would be of assistance to all prospective storage developers if some sort of established, pre-filing protocol were developed under the auspices of the Board in the form of a Storage Applications Filing Requirements Manual. In its experience over the last three years, Tribute has worked closely with Board Staff and its consultants to address various requirements, some of which were unforeseen and costly in terms of delays. Other unpredicted issues were entirely unforeseeable by Tribute and the regulatory staff who dealt with the issues. Such an advance process would expedite and define the Board's information expectations and reduce time, cost and risk exposure for all storage applicants and optimize the regulatory path for the Board.

Tribute is prepared to assist the Board should its decision in this proceeding require that there be a subsequent meeting of Staff and interested parties to create such a Manual.

### **Summary**

Tribute has specifically monitored this proceeding to the extent that the exchanges surrounding development of third party storage required its participation. It was decided that many of the rate-related issues and specific policy matters and arguments pertaining to allocation issues between ex-

versus in-franchise customers were best left to those parties who are most affected and engaged in those debates. Similarly, customer groups who are most in need of special utility services are best able to speak for themselves.

Given the wide commercial rate parameters available in the currently approved C1 range rate, which Tribute is currently approved to use and the Board's existing forbearance for independent parties to avoid filing or approval of storage contracts, Tribute recommends to the Board that it is not much of a further step to refrain from any rate regulation.

Non-utility storage investors are in no way to be subsidized by ratepayers, who the Board is obliged to protect; there is therefore no risk for captive ratepayer exposure on the sunk costs of these storage facilities. The flipside question is what is to be gained by the Board continuing to regulate the rates for non-utility storage? Tribute submits that there is no real gain for the Board to remain in this category of regulatory rate supervision, as it should only remain in that business as a surrogate for competition if there is insufficient evidence of competitive forces. That presumably was the intent of inserting the forbearance section 29 into the amended *OEB Act*.

Tribute submits that the Board can directly rely on its extensive internal experience with the ARC to support further forbearance from rate regulation as well as its interaction with the Board's Compliance Office, where concerns are directed and expressed about inappropriate market behavior.

Tribute urges the Board to find that there is a competitive storage market (and integrated secondary market) with sufficient competitive forces at work to enable itself to forbear from regulating the rates for all independent and ARC-compliant, affiliated storage companies operating in Ontario.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED  
BY TRIBUTE RESOURCES INC.**

Robert Lockhart  
Director, Project Development

