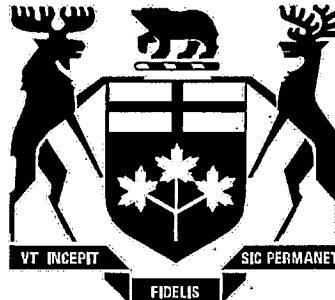


Appendix "A" to Board Order
Re: MHP Core Points Decision



Ontario

ONTARIO ENERGY BOARD

FILE NO.: EB-2005-0551

VOLUME: 17

DATE: September 7, 2006

BEFORE:	Gordon Kaiser	Presiding Member and Vice Chair
	Cynthia Chaplin	Member
	Bill Rupert	Member

THE 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 storage of gas;

Hearing held at 2300 Yonge Street, 25th Floor,
Toronto, Ontario, on Thursday,
September 7, 2006,
commencing at 9:38 a.m.

Volume 17

B E F O R E:

GORDON KAISER

PRESIDING MEMBER and VICE CHAIR

CYNTHIA CHAPLIN

MEMBER

BILL RUPERT

MEMBER

7 **DECISION:**

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

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

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

25 The Board issued a notice of reactivated proceedings
26 on August 11th, referring these three core issues to this
27 proceeding. Market Hub, as we know, has participated and
28 intervened in this proceeding, has filed evidence, and

1 argument.

2 By way of background, Market Hub Partners is a
3 Partnership that is wholly owned by subsidiaries of Duke
4 Energy Corporation. The Partnership was established to
5 develop natural gas storage facilities in Southwestern
6 Ontario near Dawn, where it intends to offer merchant
7 storage service at market-determined prices directed to
8 wholesale customers.

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

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

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

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

24 Specifically, the three questions are as follows.
25 Market Hub has asked the Board to find that Market Hub:
26 One, cannot exercise market power; two, be granted
27 authority to charge market-based rates for its services;
28 and three, be allowed flexibility to contract for services

1 without requiring approval of individual contracts,
2 provided that Market Hub operates within a base set of
3 service terms and conditions approved by the Board.

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

6 It should be pointed out that Market Hub has
7 indicated that the term "authority to charge market-based
8 rates" means the authority to charge rates within the Union
9 Gas C1 rate range, which would be in effect from time to
10 time.

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

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

22 "To be clear, Market Hub Partners Canada's
23 request for an expedited decision on the Core
24 Points is intended only to provide Market Hub
25 Partners Canada with the confidence to move the
26 St. Clair project plans forward such that the
27 incremental storage services can be offered to
28 the market commencing in 2007. The request to

1 an expedited decision does not substitute in
2 any way for the forbearance decision ..."

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

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

7 The final arguments of the parties on August 28th and
8 29th dealt with a number of issues in this proceeding.
9 Although most of the intervenors did not deal in any detail
10 with the Market Hub request, there were, however, four
11 parties that did make some comments.

12 First, the Board hearing team took the position that
13 because of MHP's status as an affiliate of Union, a
14 decision on the core points was, in effect, a decision on
15 the merits of Union's position. Accordingly, the Board
16 hearing team concluded that an expedited decision would not
17 be appropriate.

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

22 With respect to the issue of contract approval,
23 Mr. Thompson, the counsel for IGUA, raised the question as
24 to whether waiving the Board's approval of storage
25 contracts - which was the third point Market Hub asked the
26 Board to address - would be consistent with the Board's
27 treatment of contracts entered into by Tribute Resources,
28 an independent Ontario storage developer that received

1 approval to charge market-based rates. And that decision
2 is the Board's decision of June 17th of this year, the
3 reasons for which were issued on August 25th.

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

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

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

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

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

27 The Board also notes that, with the exception of
28 Schools, no party has explicitly asserted that Market Hub

1 will have market power.

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

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

9 The relevant part of those regulations states as
10 follows:

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

20 That's a reference to the FERC regulation paragraph
21 284.503(b)(4).

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

27 This is the concern that appears to be expressed by
28 the Board hearing team and Schools in arguments that they

1 have filed.

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

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

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

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

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

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

28 Given that the Board has determined that Market Hub

1 cannot exercise market power, the Board finds it is
2 appropriate to grant Market Hub the same treatment it has
3 accorded Tribute.

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

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

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

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

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

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

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

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

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

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

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

1 its regulation of Union.

2 And the Board will be considering, as part of its
3 deliberation on the issues in this case, whether to require
4 pre-approval of storage contracts between regulated
5 distributors and affiliates.

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

10 I trust that's satisfactory, Mr. Smith.

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

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

24 MR. SMITH: Yes, sir.

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

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