



EB-2006-0015

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

AND IN THE MATTER OF an Application by Union Gas Limited for approval of the parties to, the period of, and the storage that is the subject of a long-term gas storage contract, identified as Contract No. LST048, between Union Gas Limited and Virginia Power Energy Marketing Inc. (an assignment of existing Board approved storage Contract No. LST044)

BEFORE: Paul Vlahos
 Presiding Member

DECISION AND ORDER

The Application

On January 23, 2006, Union Gas Limited (“Union”) applied under subsection 39(2) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B for an order of the Board approving, without a hearing, the parties to, the volumes under, and the terms of a Gas Storage Service Contract (Contract No. LST048) between Union and Virginia Power Energy Marketing Inc (“VPEM”). In the application Union asked the Board to approve a reassignment to VPEM of the storage space of 1,582,584 GJ (1.5 Bcf) as set in Board’s approved storage Contract No. LST044 between Union and Duke Energy Marketing Canada Corp. (“DEMA”) commencing April 1, 2006 and ending March 31, 2009. This matter has been assigned Board File No. EB-2006-0015.

Union provided a copy of the Permanent Storage Contract Assignment Agreement between DEMA, VPEM and Union (the “Assignment Agreement”). The contract is being assigned as result of DEMA’s exit from “certain merchant activity in North America.” The ability of the parties to enter into the Assignment Agreement is set in the paragraph 13.01 of the LST044 contract. Execution of the LST048 contract is conditional on the termination of LST044 contract between Union and DEMA. All aspects of the LST048 contract remain the same as in LST044 contract except for the change of contracting party from DEMA to VPEM.

Union has requested that the application be disposed of without a hearing as stipulated in section 39(2) of the Act. Union requested that certain commercial terms in the contract be held in confidence as per the Board’s *Rules of Practice and Procedure* on the basis that the contract contains information that is commercially sensitive and will harm the contracting parties’ competitive positions. The confidential information pertains largely to the pricing provisions in the contract.

In the Board’s Natural Gas Forum Report, dated March 30, 2005, the Board indicated that it would review the issue of whether it should refrain from regulating some or all matters relating to gas storage in the Natural Gas Electricity Interface Review (NGEIR) which is currently ongoing. In view of the ongoing NGEIR proceeding, the Board identified the need to determine if any parties, other than VPEM, would be affected by the outcome of the application and whether the Board should or should not proceed without a hearing.

The Board issued a Notice of Application on March 6, 2006. The persons who received this Notice were those who participated in the Natural Gas Forum and those who are participating in the NGEIR and Union’s 2007 rates proceeding. In the Notice of Application the Board invited interested persons to file, by March 13, 2006, a written submission with the Board addressing whether and how they were materially affected

by the application, and the merits of the application. No party filed a submission.

In the Notice of Application Union was to file responses to any submissions. On March 20, 2006, Union noted that there were no submissions by parties and requested that the application proceed without a hearing. Union reiterated that the approval will not affect Union's ability to meet future growth in storage requirements for its in-franchise customers and that a delay in processing the application will increase regulatory and market uncertainty for participants in Ontario's storage market. Union submitted that approval of contract LST048 will not undermine possible outcomes of the NGEIR.

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 the fact that no party objected to a proceeding without a hearing, the Board has determined that a hearing is not required.

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

The Board accepts Union's submission that the contract LST0048 would not affect Union's ability to meet future gas storage needs for its in-franchise customers.

For the reasons above, the Board approves Union's current application. The Board

also finds that it is in the public interest not to disclose the pricing information contained in the LST0048 contract, as requested by Union.

THE BOARD ORDERS THAT:

The proposed contract and the parties to, the period of, and the storage space that is the subject of Contract LST048 attached to this Decision and Order as Appendix "A", are hereby approved. Union shall file an original signed or certified copy of the executed contract with the Board as soon as it is available.

Upon execution of the LST048 contract, contract LST044 between Union and Duke Energy Marketing Canada Corp. is terminated.

DATED AT Toronto, March 28, 2006.

ONTARIO ENERGY BOARD

Original Signed By

Peter H. O'Dell
Assistant Board Secretary

**APPENDIX "A" TO
BOARD DECISION AND ORDER
IN THE MATTER OF EB-2006-0015**

Being a copy of a contract for storage services
from Union Gas Limited, identified as Contract No. LST048
from which Schedule "A" containing pricing information is withheld and not currently
available to the public.