



RP-2003-0253
EB-2003-0314
EB-2003-0315
EB-2003-0316
EB-2003-0317

IN THE MATTER OF the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF an application by Tribute Resources Inc. and Tipperary Gas Corp. for an order designating a gas storage area;

AND IN THE MATTER OF an application by Tribute Resources Inc. and Tipperary Gas Corp. for an order authorizing the injection of gas into, storage of gas in, and removal of gas from a gas storage area;

AND IN THE MATTER OF an application by Tribute Resources Inc. and Tipperary Gas Corp. for an order granting leave to drill three wells in the proposed designated storage area;

AND IN THE MATTER OF an application by Tribute Resources Inc. and Tipperary Gas Corp. for an order approving or fixing just and reasonable rates for the storage of gas.

BEFORE: Bob Betts
Presiding Member

Paul Sommerville
Member

Pamela Nowina
Member

DECISION ON INTERIM COST AWARD

June 6, 2005

Tribute Resources Inc. ("Tribute") and Tipperary Gas Corp. ("Tipperary"), collectively (the "Applicants") filed an Application dated December 24, 2003 which was amended February 5, 2004 and further amended August 10, 2004, with the Ontario Energy Board requesting the following Orders:

- Designating the Tipperary North pool in the Township of Central Huron areas as gas storage areas under s. 36.1 of the *Ontario Energy Board Act, 1998* (the "Act");
- Authorizing Tipperary to inject, store and withdraw gas under s. 38(1) of the *Act* (the "Injection and Withdrawal Order");
- Setting compensation for landowners in the proposed designated area under s.38 (3) of the *Act* (the "Compensation Order"); and
- Fixing rates for the sale of gas storage services under s.36 of the *Act* (the "Rate Order").

In addition, the Applicants requested that the Board provide a report to the Minister of Natural Resources (the "MNR") recommending approval of the Applicants' applications to drill wells under s. 40 of the *Act* (the "Report").

Collectively, the orders and report sought by the Applicants to be granted by the Board will support the conversion of the existing Tipperary North pool in the Township of Central Huron from production to storage.

The Board issued a Notice of Application dated February 25, 2004. The Applicants served and published this Notice according to the Board's Letter of Direction. The proceeding has been conducted in a phased manner due to the complexity of the multiple applications. The Board held seven days of oral hearings from August 9 to August 17, 2004 (Phase 1) and a one day oral hearing on February 14, 2005 (Phase 2). Oral hearing on Phase 3 of the proceeding was held in Toronto on June 2 and June 3, 2005.

In Phase 1 of the proceeding the Board issued its Partial Decision with Reasons, dated October 25, 2004 (the "Partial Decision"). In the Partial Decision the Board found that there was sufficient evidence to approve the Application for an order designating a gas storage area and to report favorably to the Minister of Natural Resources on the need to drill three horizontal wells within designated storage area. At the same time the Board has found that there was insufficient evidence to render a decision on the Application for an order authorizing injection into and withdrawal of gas from the Tipperary Pool. With regard to the landowners compensation, the Board stated in the Partial Decision that further negotiations between the landowners and the Applicants should take place.

Phase 2 of the proceeding dealt with the landowners compensation under s. 38(3) of the Act and to a limited extent with geological issues related to section 38 (1). On February 1, 2005 the Board, by means of a procedural order, directed a settlement conference on landowner compensation. In the settlement conference, held on February 9, 2005 in London, the Applicants and Tipperary Storage Landowner Association (the "TSLA") reached an agreement on compensation (the "Settlement Agreement").

In an oral hearing held in Toronto on February 14, 2005, the Board adopted the Settlement Agreement. Terms of the Settlement Agreement are contained in a form of an Amending Agreement which was filed as an exhibit in the oral hearing and approved by the Board. In the oral hearing on February 14, 2005, the Board stated that it would consider an interim award of cost claims for activities associated with Phases 1 and 2 of the proceeding. This concluded the Phase 2 of the proceeding.

Currently, Phase 3 of the proceeding focuses on the business plan and financial viability of the Applicants as these relate to the application for orders under s. 38(1) and 36 of the Act. An oral hearing to address these issues was held on June 2, and June 3, 2005 in Toronto.

By a letter dated January 11, 2005, the registered intervenors eligible for cost awards, namely TSLA and the Huron County Federation of Agriculture (the "HCFA") submitted the first interim cost claim request. By a letter dated March 3, 2005 the TSLA and the HCFA claimed Phase 2 costs. On April 1, 2005, the Applicants submitted a written objection to the costs claims. On April 20, 2005 the TSLA and the HCFA filed a reply to the Applicants' objections to costs. This completed the submissions on the interim cost award request.

Total costs claims for Phase 1 by the TSLA were \$ 80,306.53 and by the HCFA were \$ 20,755.18 making a total intervenors' costs claims for Phase 1 of \$ 101,061.71. Total costs claims for Phase 2 by the TSLA were \$ 74,605.37 and by the HCFA were \$ 5,424.84 making a total costs claims for Phase 2 of \$ 80,030.21.

The Applicants did not disagree with the costs claims related to Phase 1. However, the Applicants submitted that cost claims related to Phase 2 were excessive and suggested that they should be reduced. The TSLA and the HCFA in their respective replies maintained that an interim cost award be granted in full as requested.

The Board sees no basis upon which to discount or reduce legal representation claims for either Phase 1 or Phase 2. The Board considers that legal representation for the TSLA and representation for HCFA respectively provided benefits to the process in both Phases of the proceeding and as such should be awarded as claimed.

Also, the Board notes that in Phase 1, the representatives and witnesses of the TSLA and the HCFA provided a valuable contribution to the proceeding and assisted the Board in reaching its decision. With respect to Phase 1 of the proceeding, the Board finds that it is

reasonable to award to the TSLA and the HCFA legal representation costs and consultant related costs as claimed by the intervenors.

The Board notes the concerns expressed by the Applicant respecting what it considers excessive claims for hours spent and disbursements claimed by TSLA consultants with respect to Phase 2.

The Board expects large groups of interested individuals to coordinate their participation in the proceeding. This includes optimizing the use of legal resources and consultants.

The Board finds it reasonable, in this case, to reduce the costs for participation of TSLA consultants in Phase 2 to relate more closely with the time spent by their legal counsel, recognizing the need to provide direction to legal counsel. Phase 2 of the proceeding dealt mainly with the negotiated compensation matters with considerably fewer technical issues.

The Board finds that, total costs awarded to the TSLA for Phase 2 should be based on reduced total number of consultant hours set to be no greater than the number of hours claimed by legal counsel for the TSLA. Correspondingly, disbursements for the TSLA for Phase 2 will also be reduced to reflect the reduced total number of consultant hours claimed by the TSLA for Phase 2.

The Board notes that for Phase 2 the HCFA claimed consultant hours only and did not claim any legal costs. The Board finds it reasonable to award in full the total consultant hours costs claimed by the HCFA for Phase 2.

COST ORDERS

The Board's Cost Assessment officer shall prepare his recommendations of cost awards in the usual manner based on the Board's findings stated in this Decision on Interim Cost Award. Upon issuance of the Cost Orders, the Applicants shall pay the costs awarded with due dispatch. The Applicants shall also pay the Board's costs upon receipt of the Board's invoice.

DATED at Toronto June 6, 2005

ONTARIO ENERGY BOARD

Signed on behalf of the Panel

Original signed by

Bob Betts
Presiding Member