



EB-2014-0275

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B (the Act");

AND IN THE MATTER OF an application by Union Gas Limited for an Order pursuant to Section 43(2)(a) of the *Ontario Energy Board Act, 1998*, granting leave to acquire voting securities of Tipperary Gas Corp.;

AND IN THE MATTER OF an application by Tipperary Gas Corp. for an Order pursuant to Section 18(1) of the *Ontario Energy Board Act, 1998* granting leave to transfer the authority to operate the Tipperary Pools as set out in Decision and Order of the Board in EB-2006-0018/-0159/-0279, in respect of the injection, storage and removal of gas from a gas storage area, to Union Gas Limited;

AND IN THE MATTER OF a request by Union Gas Limited to cancel the Decision and Order of the Board in EB-2008-0049, in respect of the approval of contract terms between Union Gas Limited and Huron Tipperary Partnership 1 under Section 2.3.1 of the Affiliate Relationships Code for Gas Utilities.

BEFORE: Ken Quesnelle
Presiding Member and Vice Chair

DECISION AND ORDER
November 27, 2014

The Application

On August 26, 2014 Union Gas Limited (“Union”) filed an application with the Ontario Energy Board (the “Board”), which was amended on September 22, 2014 (“Application”).

Union currently owns 75% of the shares of Tipperary Gas Corp. (“Tipperary”) and has applied to the Board for approval to purchase all of the remaining voting shares. Tipperary is the general partner of Huron Tipperary Limited Partnership 1, which carries out a non-utility natural gas storage business consisting primarily of two natural gas storage pools in the Municipality of Central Huron (the “Tipperary Pools”).

Tipperary and Union have jointly applied to the Board for approval to transfer the authority to operate the Tipperary Pools from Tipperary to Union.

Union has also asked the Board to cancel the exemption from the Affiliate Relationships Code (the “ARC”).

The Proceeding

A Notice of Application (the “Notice”) was issued on September 24, 2014. The Notice was posted on the respective websites of Union and Tipperary and served in accordance with the Board’s directions.

The Board did not receive any requests for intervenor status. On October 7, 2014 the Tipperary Storage Landowners' Association filed a letter of comment with the Board stating its support of the Application.

The Board proceeded by way of written hearing.

On October 22, 2014, the Board received a letter from Board staff indicating that it did not intend to file any interrogatories or to pursue any other form of discovery in relation to this Application. On October 29, 2014 Board staff filed written submissions in support of the Board’s approval of the Application. Union Gas filed a reply submission on October 31, 2014.

Background

The Board approved Union's acquisition of 75% shares by Union from Tipperary in 2007 in the EB-2007-0837 proceeding. Tipperary is the general partner of The Huron Tipperary Limited Partnership 1, which carries out a non-utility natural gas storage business consisting of Tipperary North Storage Pool and Tipperary South Storage Pool in Huron County (the "Huron Pools").

The Board approved Union as a storage operator of the Huron Pools in 2008 (EB-2006-0018/EB-2006/0159/EB-2006-0279). Since the start of the storage operations, Union has been marketing all of the 3.1 PJs capacity of these pools as a non-regulated business.

By way of the Board's Decision and Order in proceeding EB-2008-0049 regarding the storage services contract between Union and Tipperary, the Board granted an exemption to Union from section 2.3.1 of the ARC. Union stated that if the acquisition is approved there will no longer be an affiliate relationship between the parties.

Findings

For the reasons set out below, the Board finds that Union's proposed purchase of the remaining 25% of Tipperary is in the public interest and grants to Union an order under section 43(2)(a) of the Act. The Board also finds that the transfer of authority to operate the Storage Pools from Tipperary to Union is in the public interest. Further, with the approval of the purchase of 25% remaining shares the Board cancels the exemption from the ARC which the Board previously granted to Union.

Acquisition of Tipperary by Union - Section 43(2) (a) Act

Section 43(2) of the Act reads:

(2) No person, without first obtaining an order from the Board granting leave, shall,

(a) acquire such number of voting securities of a gas transmitter, gas distributor or storage company that together with voting securities already held by such person and one or more affiliates or associates of that person, will in the aggregate exceed 20 per cent of the voting securities of a gas transmitter, gas distributor or storage company;

On August 18, 2014 Union and Tipperary entered into a Purchase and Sale Agreement to complete the acquisition of the remaining 25% shares of Tipperary subject to the Board's approval. Union proposes to complete the acquisition by November 30, 2014.

In its Application Union stated that, because the acquisition is related to unregulated storage business, there will be no impact on any of Union's regulated customers, should the Board approve the acquisition of the remaining shares. Union also stated that its shareholders will assume all the financial risks associated with the proposed acquisition and that the ratepayers will be held whole.

Regarding the risk of the transaction itself, Union stated that its shareholders will fully absorb the cost and the financial risk of transaction.

Currently, Union and Tipperary have a M16 transportation contract to set the transportation rate Tipperary pays to Union for transportation of gas between Dawn and Huron Pools to inject and withdraw gas from storage. Once the acquisition is completed the M16 contract will be null and void and the revenue that is currently allocated to Union's ratepayers will be lost. To compensate the ratepayers for the loss of M16 revenue, after the acquisition is completed, Union stated it would annually add an amount equivalent to this revenue to Union's regulated transportation revenue.

In conclusion, the Board is satisfied that the proposed acquisition has no adverse impact on Union's ratepayers provided that Union's shareholders fully absorb the cost of and the financial risk the transaction, that Union offers only unregulated storage services and that all direct operating and maintenance costs related to the Huron Pools operation are allocated to unregulated storage operation, and that Union's ratepayers are compensated for loss of revenue following the annulment of Union's transportation M16 contract with Tipperary.

Transfer of Operating Authority to Union - Section 18(1) Application

Section 18(1) of the Act reads:

18. (1) No authority given by the Board under this or any other Act shall be transferred or assigned without leave of the Board. 1998, c. 15, Sched. B, s. 18 (1).

The Board, in the EB-2006-0018/EB-2006-0159/EB-2006-0279 proceeding granted to Tipperary the authority to operate the Huron Pools (“Huron Pools Operating Orders”). In the same proceeding Union requested that conditions to the Huron Pools Operating Orders be amended on account that Union becomes an operator of the Huron Pools. Union and Tipperary entered into an Operating Agreement dated December 18, 2007.

To allow Union to act as a Huron Pools operator, the Board, on July 2, 2008, exempted Tipperary from certain operation related conditions. Union was required to file evidence that demonstrated that CSA 341.1 requirements related to Operations and Maintenance Procedures and Emergency Response Plan, under the authority of the Ministry of Natural Resources be satisfied. This ensured that Union operates the Huron Pools safely and with appropriate technical and operational expertise.

Since the first gas injection in 2008 in the Huron Pools, Union has been the operator under an Operating Agreement with Tipperary. Union’s technical and operational capabilities as a storage operator have been demonstrated and placed on the record and reviewed and accepted by the Board.

The Board has no concerns about Huron Pools Operating Orders being transferred from Tipperary to Union.

Cancellation of the Exemption from ARC

Section 2.3.1 of the ARC states:

2.3.1 The term of an Affiliate Contract between a utility and an affiliate shall not exceed five years, unless otherwise approved by the Board.

In accordance with section 2.3.1 of ARC, the Board granted an exemption to Union and approved a ten year storage service contract between Union and Tipperary (EB-2008-0049).

As the Board approves, by way of this Decision and Order, the proposed acquisition of the remaining shares of Tipperary by Union, the Board cancels the exemption from section 2.3.1 of the ARC.

THE BOARD ORDERS THAT:

1. Union Gas Limited is granted leave to acquire, 25% of the voting securities of Tipperary Gas Corp., pursuant to section 43(2)(a) of the Ontario Energy Board Act (the "Act");
2. Tipperary Gas Corp. is granted leave to transfer, from Tipperary Gas Corp. to Union Gas Limited, the authority as set out in the Decision and Order of the Board in EB-2006-0018/-0159/-0279 to operate the Tipperary North Storage Pools and the Tipperary South Storage Pools in the Municipality of Central Huron, pursuant to section 18(1) of the Act;
3. The exemption from the ARC granted to Union Gas Limited as set out in Decision and Order of the Board in EB-2008-0049 is cancelled.
4. Union Gas Limited shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

DATED at Toronto, November 27, 2014

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary