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BY EMAIL

March 13, 2020

Ms. Christine Long
Registrar & Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
BoardSec@oeb.ca

Dear Ms. Long:

**Re: Ontario Energy Board (OEB) Staff Submission
Tribute Energy Storage Inc. – Application for De-designation of the Bayfield
and Stanley Reservoirs
OEB File Number: EB-2019-0287**

In accordance with Procedural Order No. 1, please find attached the OEB staff submission in the above proceeding. The attached document has been forwarded to Tribute Energy Storage Inc. and to all other registered parties to this proceeding.

Yours truly,

Original Signed By

Judith Fernandes
Project Advisor, Natural Gas Applications

Encl.



ONTARIO ENERGY BOARD

OEB Staff Submission

Tribute Energy Storage Inc.

**Application for De-designation of
the Bayfield and Stanley
Reservoirs**

EB-2019-0287

March 13, 2020

Introduction

On November 28, 2019, Tribute Energy Storage Inc. (TESI) applied to the Ontario Energy Board (OEB) under section 36.1(1)(b) of the *Ontario Energy Board Act, 1998* (the Act) for an order revoking the designation of the natural gas storage areas known as Bayfield Pool (Bayfield) and Stanley 4-7-XI Pool (Stanley), located in the County of Huron.

In 2012, the OEB designated the Bayfield and Stanley pools (the Pools) as natural gas storage areas pursuant to section 36.1(1)(a) of the Act.¹ TESI states that the storage pools were not developed as natural gas storage facilities as originally planned and are unlikely to be developed for this use. Therefore they are no longer needed to be designated as gas storage areas. Instead, TESI plans to develop the Pools as compressed air energy storage (CAES) facilities.

The Proceeding

The OEB issued a Notice of Hearing on January 9, 2020. Huron County Federation of Agriculture (HCFA) applied for intervenor status and cost eligibility. No objection was received from TESI. HCFA was approved as an intervenor and found eligible to apply for an award of costs.

On February 13, 2020, the OEB issued Procedural Order No. 1, making provision for interrogatories, interrogatory responses and submissions. Interrogatories were filed by OEB staff on February 27, 2020. TESI filed its responses to interrogatories on March 6, 2020.

Background

The OEB's 2012 Decision² granted several requests by Tribute Resources Inc. and Bayfield Resource Inc (Tribute Resources) for:

- 1) Designation of the Pools as gas storage areas under section 36.1(1)(a) of the Act
- 2) Authorization to inject gas into, store gas in and remove gas from the Pools under section 38(1) of the Act

¹ EB-2011-0076/EB-2011-0077/EB-2011-0078, Decision issued December 21, 2012.

² EB-2011-0076/EB-2011-0077/EB-2011-0078, Decision issued December 21, 2012.

- 3) Favourable Report from the OEB to the Ministry of Natural Resources and Forestry (MNRF) for well drilling licences for proposed wells in the Pools under section 40(1) of the Act.³
- 4) Leave to construct (LTC) a natural gas transmission pipeline to connect the Pools to Union Gas Limited's pipeline system under section 90(1) of the Act.

The OEB defined the following issues to be considered in the designation of the Pools:

- 1.1. Is the underlying geological formation appropriate for storage operations?
- 1.2. Is the tract of land to be designated appropriately bound and sized to provide safe operation of the storage pool?
- 1.3. Is there a need for this incremental storage capacity in Ontario?

The MNRF intervened in that application. The MNRF provided assurance that the geological evidence submitted conformed with MNRF administered standards and regulatory requirements and that the MNRF had reviewed and accepted the proposed boundaries of the designated storage areas (DSAs).

The OEB found that the geological evidence on the underlying geology and Pool boundaries was uncontested and that the tracts of land to be designated are appropriately bound and sized to provide safe operation of the Pools.

On the issue of need, Tribute Resources had submitted that although the need for incremental storage capacity may not be financially or economically supported today by current market conditions, this could change, and was expected to change, in a few short years as the market readjusted.⁴ Tribute Resources argued that the OEB approvals would allow Tribute Resources to move ahead quickly when market conditions improve.

The OEB found that if Tribute Resources was required to wait until market conditions were favourable to obtain the respective orders from the OEB, the company would not be able to act on the market opportunity on a timely basis. The OEB also found that there was no adverse impact on the public interest due to long timeframe, because the economic and financial risks associated with the project were to be borne by Tribute Resources and no rate payers were at risk. The OEB noted that circumstances could change from the time of its decision until 2016 (the proposed in-service date of the project) and addressed this matter by attaching several conditions of approval to its orders for: operation of the Pools,

³ By letter dated November 9, 2009, the Ministry of Natural Resources, Petroleum Resources Centre referred to the OEB applications by Tribute Resources for licences to drill wells within the Pools.

⁴ Ontario Energy Board EB-2011-0076; EB-2011-0077; EB-2011-0078 , Argument-in-Chief of Tribute Resources, October 9, 2012, page 5, paragraph 2.

well licences, and LTC. Of particular note are the expiry dates set by the OEB in its orders. The OEB ordered that should Tribute Resources fail to commence injection before July 1, 2016, it was required to apply to the OEB for an extension of the authority granted and was required to submit evidence to show why such an extension should be granted. In its order for well licences, the OEB stated that its authorization for the issuance of the drilling licences was limited to 12 months from the date of the OEB's Report to the MNRF (this is required by legislation). The OEB's order with respect to the LTC authorization stated that the LTC authorization shall terminate December 31, 2015 unless construction has commenced prior to that date. No conditions of approval were attached to the order for designation of the Pools. OEB staff notes that Tribute Resources did not apply for an extension of the sunset provisions and consequently, the deadlines expired. As well, in 2017, Tribute Resources sold its rights to the Pools to TESI.

Submissions

Revocation of the Designation

TESI requested an OEB order revoking the designation of the Pools as natural gas DSAs.

Under section 36.1(1) of the Act, the OEB may by order,
(a) designate an area as a gas storage area for the purposes of this Act; or
(b) amend or revoke a designation made under clause (a).

OEB staff submits that of the three issues the OEB considered in the designation proceeding, the most salient issue for the OEB's consideration in this application is that of need.

According to TESI's application, the envisaged development of the Pools did not occur because it was not economical to do so given persistent depressed gas market prices. TESI expects these gas market price conditions will continue which makes the development of new natural gas storage highly unlikely.

TESI references certain website links in support of its assessment. This includes the Natural Gas Intelligence data website reflecting graphs of Canadian natural gas prices on a daily, weekly, and bidweek basis which TESI states show prices that are comparably low when viewed from the lens of historical pricing.

TESI also refers to various documents and states that its expectation is that demand for natural gas will remain relatively flat.

OEB staff notes that Tribute Resources in 2012, and TESI as part of the current application, have made business decisions based on market conditions. As no storage operations have occurred since the designation of the Pools in 2012 and no prospects for doing so have been identified, there is no evidence of the Pools being used and useful in the foreseeable future. Additionally, there are no expressions of interest from third parties identified in this application or indeed any interventions to suggest that capacity should be maintained.

OEB staff also notes that the 2012 Decision included conditions of approval setting out expiry dates for the operation of the DSAs and the construction of the pipeline. As these dates have lapsed, TESI is constrained from undertaking any activity with respect to the reservoirs even though the Pools are still natural gas DSAs.

The Pools represent a small capacity of 3.3 BCF of Ontario's total storage capacity of 248 BCF, which TESI submits is not sufficiently material to make a difference in how Ontario is likely to store gas a few decades into the future. OEB staff agrees that the capacity of the pools is not material especially given that the geographic market for competitive storage, based on the NGEIR decision, includes Michigan, and parts of Illinois, Indiana, New York and Pennsylvania.⁵

TESI states that it is in the public interest to develop these reservoirs for a more useable and useful purpose as CAES facilities. The CAES facilities would be used to store power that could be released for use at higher priced, peak demand hours.

While OEB staff takes no position on TESI's plans to develop these reservoirs as CAES facilities, OEB staff agrees that the evidence provided by TESI supports their position that the designation is not needed.

Landowner Consultation

In support of its application, TESI provided a letter from affected landowners to the MNRF, supporting the development of the Pools as CAES facilities.

In response to interrogatories, TESI states that it met several times with the

⁵ Natural Gas Electricity Interface Review Decision with Reasons, November 7, 2006, p.3

landowners regarding the development of the reservoirs as CAES systems. The meetings have focused on the transition of the Gas Storage Comprehensive Settlement Agreement and Gas Storage Lease to CAES-equivalent documents, along with an Access and Option Agreement for CAES development, all of which are in the negotiation stages and expected to be completed in 2020.

TESI submits that the feedback (mainly on the agreements) has been positive throughout, and that any concerns or specific landowner issues have been and/or are being addressed.

As well, landowners have agreed to engage a lawyer to advise the landowners independently and review the draft agreements on their behalf, for which TESI has offered to pay their costs. In TESI's view, the relationship between the landowners and TESI are good and communications are open and transparent.

OEB staff notes that TESI has engaged with affected landowners with respect to its proposed plans for the DSAs. TESI was also required to serve notice of its application for de-designation to all affected landowners and all parties who participated in the designation proceeding. The only party to intervene in this application is the Huron County Federation of Agriculture. No comments were received and to date, no concerns have been noted.

Coordination of De-designation and New Regulation

TESI indicates that the proposed use of the Pools will require a new government regulation to be passed permitting the use of the Pools for CAES. TESI states that it has made a formal request to the MNR to obtain a CAES regulation pursuant to the Oil, Gas and Salt Resources Act (OGSRA).

TESI is requesting the OEB to make its approval of the de-designation conditional upon the issuance of a new OGSRA regulation, so that the designation delineation for either gas or CAES is preserved for whichever use remains when this process is completed.

In OEB staff's view, it would be preferable to avoid implementing a condition that could be in effect for an undetermined amount of time. OEB staff notes that the timing or likelihood of any such regulation being passed is not known. It would be unusual in OEB staff's view to attach a condition with respect to an external event whose exact details are unknown and that may never come to pass. OEB staff submits that as there

appears to be no need for these reservoirs to remain as natural gas DSAs, the OEB should simply revoke the designation without conditioning the de-designation on the making of a CAES regulation.

Alternatively, if the OEB was inclined to accept TESI's proposal, the OEB could place a sunset date on the approval. OEB staff suggests that two years may be a reasonable time period that balances the uncertainty of the timing of any new regulation, and the need for certainty with respect to the status of the pools going forward. If no regulation is passed within 24 months of the OEB's decision on this application, the de-designation approval will no longer apply.

All of which is respectfully submitted