

Ministry of Natural Resources
Red Lake District
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Ministry of Transportation
Kenora Area Office
808 Robertson Street
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Ministry of Tourism and Culture
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June 17, 2011

VIA EMAIL

Robert Janes
Janes Freedman Kyle Law Corporation
Suite 340-1122 Mainland Street
Vancouver, BC V6B 5L1

Dear Mr. Janes:

Re: Proposed Union Gas Pipeline to Red Lake

Thank you for conveying the concerns of your client, Grand Council Treaty 3 ("GCT 3"), in relation to the natural gas pipeline Union Gas has proposed to construct along Highways 105 and 125 to Red Lake (the "Project").

We are pleased to be able to advise you that the Ontario Crown has (and will continue) to consult appropriately with the Treaty 3 First Nations whose asserted traditional land use areas may be adversely affected by the proposed Project, particularly the Wabauskang and Lac Seul First Nations. Ontario is engaged with these First Nations directly through contact by its staff, and through continuing oversight of the efforts of the proponent, Union Gas, to which procedural aspects of consultation have been delegated, chiefly within the framework set out by the "Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario" (6th ed.) of the Ontario Energy Board (the "Environmental Guidelines"). In addition, there has been engagement in respect to the Project with your client, GCT 3, by Union Gas. Although this is not legally required, we appreciate that it may be of practical benefit to GCT 3, individual Treaty 3 signatory communities, and the proponent. The Crown owes the duty to consult to Aboriginal communities that assert or hold s.35 rights which may be adversely affected by an undertaking. The Crown does not owe a separate duty to consult to political treaty organizations.

The Ministry of Natural Resource ("MNR") authorizations required for the Project include work permit(s) for any watercourse crossings where directional drilling is not possible, Forest Resource Licences and Letters of Authority for clearing and using temporary work

spaces during the construction of the Project, and easements for sections of the proposed pipeline that will be situated on Crown lands.

Ministry of Transportation ("MTO") authorizations for the Project involve 24 temporary entrance permits allowing Union Gas to construct the pipeline in the highway right of way administered by the MTO for King's Highway 105 and 125, and 2 encroachment permits that would allow the pipeline to be situated within the right of ways.

The Ministry of Tourism and Culture's ("MTC") role is to ensure that the archaeological work required pursuant to the Environmental Guidelines is performed in conformity with the standards and guidelines governing the license held by the consultant archaeologist performing the work. This involves, among other things, review of the reports prepared by the archaeologist, including recommendations for further investigations potentially involving relevant Aboriginal communities.

More broadly, we appreciate that you are aware that the Project is subject to approval by the Ontario Energy Board, which presently has before it applications by Union Gas for Leave to Construct the proposed pipeline, a Gas Franchise Agreement with the Municipality of Red Lake, and a Certificate of Public Convenience and Necessity. These applications are subject to the Environmental Guidelines noted above, including their direction on "Aboriginal Peoples Consultation" (section 3.3.) and "Cultural Heritage Resources" (section 4.3.4). We would anticipate that the Ontario Energy Board will address the applications before it relating to the Project in accordance with its Environmental Guidelines, and will have regard to the record before it pertaining to consultation with appropriate Aboriginal communities and steps taken to address cultural heritage resources, including Aboriginal archaeological concerns.

MNR staff provided information about the Project directly to Lac Seul First Nation (in accordance with a protocol between MNR and Lac Seul First Nation) and to Wabauskang First Nation. Wabauskang First Nation has informed MNR staff that it would like more information about the Project. A meeting scheduled for this purpose on May 30, 2011 has been postponed at the request of Wabauskang to a date to be determined.

On May 3, 2011 the Lac Seul First Nation Lands and Resources Co-ordinator advised MNR staff that the First Nation does not have concerns about the Project. However, at a meeting between MNR staff and Lac Seul officials on June 13, 2011, Lac Seul officials raised some concerns without providing much detail. They stated that Union Gas representatives should come to the community in person to meet with Chief, Council and members of the community. They also explained that the Lac Seul First Nation was in the process of finalizing and filing a specific claim with the federal government relating to lands near Bruce Lake. It is not yet known whether the proposed pipeline will cross lands that Lac Seul is asserting an interest in, but this will be monitored. Lac Seul's officials did not identify any other specific concerns in relation to the potential impact of the Project on Lac Seul's Aboriginal or treaty interests.

During this meeting, Lac Seul First Nation representatives also confirmed that it is their view that consultation generally is to take place with Treaty 3 signatory communities rather than through GCT 3, recognizing that some specific First Nations may not have the

capacity to engage in effective consultations, and may authorize GCT 3 to conduct consultation on their behalf. Lac Seul's representatives underlined that this was not the case with Lac Seul, and that GCT 3 does not represent Lac Seul's interests in dealing with consultation. MNR are presently considering what further steps should be taken to address Lac Seul First Nation's newly raised concerns.

Provincial staff also continue to monitor the progress of discussions between Union Gas, Lac Seul First Nation, Wabauskang First Nation, other Treaty 3 First Nations, and your client, GCT 3.

We understand that KBM Consultants first contacted Treaty 3 First Nations (Wabaseemoong, Wabauskang and Lac Seul) on behalf of Union Gas in respect to the Project by letters dated October 25, 2010. Subsequently, on numerous occasions Union Gas representatives have written, called and met in person with representatives of these three Treaty 3 First Nations and GCT 3, including Grand Chief Kelly (who was first contacted by Union Gas on December 13, 2010 on the suggestion of Lac Seul First Nation). On the recommendation of Grand Chief Kelly, Union Gas also has engaged with Grassy Narrows First Nation.

In particular, Union Gas representatives met with Grand Chief Kelly on April 19, 2011, and hosted a meeting with the four Treaty 3 First Nation Chiefs and Grand Chief Kelly in Dryden on April 29, 2011. We understand that in response to this meeting, Union Gas has provided information to the Chiefs concerning contractor needs for the Project, and has tried to arrange a further meeting in Kenora to address First Nations' business interests.

Looking forward, as noted above, MNR staff are scheduled to meet with representatives of Wabauskang First Nation to discuss the Project in the near future, and are assessing the concerns recently raised by Lac Seul First Nation. They intend to make a decision on the various authorizations required from MNR once further discussions have taken place, and after the OEB has considered and addressed the Project related applications before it. MNR staff also will continue to monitor and consider Union Gas' further engagement with Treaty 3 First Nations, especially Wabauskang and Lac Seul. Although it appears, based on the information available to MNR, that many of the authorizations that have been asked of the MNR have minimal potential to adversely affect harvesting rights and title interests enjoyed or claimed by Treaty 3 communities, MNR appreciates that the decision points on the Project within its mandate involve some parcels of land that are just outside of the cleared and occupied road corridor, a number of water crossings, may relate to Lac Seul's pending reserve land claim, and in some instances involve long-term easements, and that these may remain areas of potential concern.

The decision points involving the MTO are even more limited in scope. Union Gas requested temporary permits for access to the established highway right of ways. In the view of the MTO, these carry no appreciable prospect of materially affecting interests held or asserted by the relevant Treaty 3 First Nations. At most, they are likely to result only in the localized clearing of trees and bushes within the existing right of way. Accordingly, MTO has issued Union Gas 24 temporary entrance permits. If you would like further details about these permits, we would be happy to provide them. In addition, and as

noted earlier, Union Gas is also seeking 2 encroachment permits for the highway right of way. These permits have not yet been issued.

With respect to archaeological concerns, Treaty 3 First Nations will be consulted regarding archaeological materials if such materials are found during the course of future work, they relate to Treaty 3 First Nations or their ancestors, and they are of some significance.

MTC is presently in receipt of a Stage 1 report by a consultant archaeologist. This report is to be reviewed by MTC. We understand that the archaeologist has determined that there is a low probability of the Project disturbing Aboriginal archaeological artifacts due to the highway corridors in which it is to be situated having been extensively disturbed during the construction of the highways. As a consequence, the archaeologist has recommended completing a Stage 2 study (likely involving test excavation and controlled surface collection) near proximate water bodies at water crossings, which are considered more likely to potentially contain archaeological materials. For more information on what is involved in a Stage 2 study, please see the OEB Environmental Guidelines (at page 36) and "Standards and Guidelines for Consultant Archaeologists" (which can be found at http://www.mtc.gov.on.ca/en/publications/SG_2010.pdf), particularly at pages 27-44.

In the event that MTC concurs in the Stage 1 Report (possibly with recommendations), a Stage 2 assessment proceeds, and Aboriginal artifacts are found that mandate a Stage 3 study, consultant archaeologists are encouraged to engage with appropriate Aboriginal communities before Stage 2 is completed. The consultant archaeologist *must* engage with relevant Aboriginal peoples during Stage 3 in "assessing the cultural heritage value or interest of an Aboriginal archaeological site that is known to have or appears to have sacred or spiritual importance, or is associated with traditional land uses or geographic features of cultural heritage interest, or is the subject of Aboriginal oral histories", or when formulating a strategy to mitigate the impact on various kinds of sites (please see "Engaging Aboriginal Communities in Archaeology" at <http://www.mtc.gov.on.ca/en/publications/AbEngageBulletin.pdf>).

At this juncture we of course do not know what (if any) Aboriginal archaeological materials will be found through a Stage 2 investigation. In the meantime, we would be pleased to ask Union Gas for its consent in sharing the Stage 1 report for the Project with GCT3, and Wabauskang, Lac Seul, Wabseemong and Grassy Narrows First Nations.

Given the past and ongoing efforts at consultation by or on behalf of Ontario touched on above, and the likely very limited direct impact of the Project on Treaty 3 harvesting rights or aboriginal title claims by Treaty 3 First Nations as a result of the Project being largely confined to existing highway right of ways, we remain confident that the Honour of the Crown has or will be satisfied in its dealings with specific Treaty 3 First Nations as various provincial decisions are made.

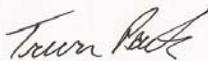
We recognize that your client is concerned with the broader effects of potentially increased economic development in the Red Lake area to which the proposed gas pipeline may contribute. We would suggest that consultation with Treaty 3 First Nations will unfold most productively as specific developments are pursued, with their attendant regulatory approvals. The scope of the related consultation processes called for will

necessarily reflect the potential magnitude of the impact of the development under consideration. In our view, the consultation that has or is unfolding in respect to the Project is appropriate to the scale and nature of the potential impact that can be meaningfully attributed to the Project.

We also remain mindful that a decision in the *Keewatin v. MNR* trial proceedings remains under reserve. Once the conclusions of the Court are known, we will be in a position to assess their import for further decision making and consultation in respect to the Project and other undertakings.

We appreciate your efforts to bring to our attention the concerns of Grand Council Treaty 3 relating to the proposed Union Gas pipeline to Red Lake, and we look forward to continuing to work with Treaty 3 First Nations in respect to the Project and other initiatives in the Red Lake area.

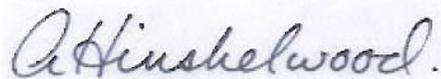
Yours very truly,



Trevor Park
Planning and Information Management Supervisor
Ministry of Natural Resources, Red Lake District



Lynda C. Creed *For.*
Corridor Management Officer
Ministry of Transportation, Kenora Area Office



Andrew Hinshelwood
Archaeology Review Officer
Ministry of Tourism and Culture, Thunder Bay

- cc. Chief Leslie Cameron - Wabauskang First Nation
- Chief Clifford Bull - Lac Seul First Nation
- Chief Simon Fobister - Grassy Narrows First Nation
- Chief Eric Fisher - Wabseemoong First Nation

John Bonin - Union Gas, Manager, Government and Aboriginal Affairs

Michael Stephenson - Crown Law Office, Civil

Peter Lemmond - Crown Law Office, Civil