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File No: 1018-009

FAX COVER SHEET

(a) the sender's name, address and telephone number;

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(b) the name of the lawyer to be served;

Union Gas
Attention: Dan Jones
Fax: 519-436-5218

Goldcorp Canada Ltd.
Attention: Andrew Moshioan
Fax: 416-363-5950

Keshen & Major
Attention: William Major
Fax: 807-468-4893

Union Gas Limited
Attention: Mark Murray
Fax: 519-436-4641

Ontario Energy Board
Attention: Kirsten Walli and Michael Millar
Fax: 416-440-7656

Gardiner Roberts LLP
Attention: Ian Blue
Fax: 416-865-6636

Mandell Pinder LLP
Attention: Bruce McIvor
Fax: 604.681.0959

(c) the date and time of transmission;

August 24, 2011 at 10:25 o'clock BC time

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August 24, 2011

Delivered by: Fax

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Mandell Pinder LLP
422 – 1080 Mainland Street
Vancouver, British Columbia V6B 2T4
Attention: Bruce McIvor
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Dear Sirs/Mesdames:

Re: Notice of Appeal to Divisional Court

Enclosed for service on you please find the Grand Council Treaty #3 Notice of Appeal and the Appellant's Certificate of Evidence.

Kindly acknowledge service of the enclosed by signing the duplicate of the Notice of Appeal and Appellant's Certificate of Evidence on the back where indicated and returning same to our office in due course for our purposes of filing proof with the Registrar.

Yours truly,

Janes Freedman Kyle Law Corporation

Per:



for

Robert J.M. Janes

RJMJ/et

Enclosure as in body

Court File No. _____

**SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

BETWEEN:

GRAND COUNCIL TREATY #3

Applicant (Appellant)

and

UNION GAS LIMITED and

the ONTARIO ENERGY BOARD

**Respondents
(Respondents in appeal)**

APPEAL PURSUANT TO SECTION 33(1) of the *Ontario Energy Board Act*.

NOTICE OF APPEAL

THE Grand Council Treaty #3 APPEALS to the Divisional Court from the final decision and order of the Ontario Energy Board dated July 25, 2011 made at Toronto.

THE APPELLANT ASKS that the order be set aside and that the matter be remitted to the Ontario Energy Board to be determined in accordance with these reasons and/or such directions as may be given by this court.

THE GROUNDS OF APPEAL are as follows:

1. The Ontario Energy Board erred in law by breaching the duty of procedural fairness owed to the Appellant by purporting to assess the adequacy of the consultation that had occurred when that issue had been excluded from the scope of the hearing by the procedural orders made by the Board;
2. The Ontario Energy Board erred in law by determining the adequacy of the Crown's duty to consult without providing the Grand Council Treaty #3 with the opportunity to make submissions regarding the adequacy of Crown consultation in regards to the Red Lake Project;
3. The Ontario Energy Board erred in law by holding that it did not have a duty to assess the adequacy of the consultation that had occurred in respect of other permits or authorizations associated with the Red Lake Project for the purpose of assessing whether or not adequate consultation had occurred in respect of the project as a whole;
4. The Ontario Energy Board erred in its interpretation of the law regarding the duty to consult such that it took an overly narrow view of the scope of impacts to be included in duty to consult and in particular excluded indirect and cumulative impacts from the duty to consult;
5. Such further and other grounds as counsel may advise and this Honourable Court deems just.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. Section 33(1) of the *Ontario Energy Board Act*, which provides for an appeal to the Divisional Court from an order of the Board;
2. The order appealed from is final;
3. Leave to appeal is not required.

The appellant requests that this appeal be heard at Toronto.

August 24, 2011

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LSUC # 33646P
Counsel for the Appellant

TO:

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Union Gas*

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Union Gas*

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Ontario Energy Board*

AND to the following Interested Parties:

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*Counsel for Wabauskang First
Nation*

Courts of Justice Act

GRAND COUNCIL TREATY #3 and UNION GAS and OTHERS

Court File No: _____

Divisional Court

PROCEEDING COMMENCED AT Toronto

NOTICE OF APPEAL

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Service of a true copy hereof admitted
this ____ day of August, 2011

By: _____

Counsel for the _____

Court File No. _____

**SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

BETWEEN:

GRAND COUNCIL TREATY #3

Applicant (Appellant)

and

UNION GAS LIMITED and

the ONTARIO ENERGY BOARD

**Respondents
(Respondents in appeal)**

APPELLANT'S CERTIFICATE RESPECTING EVIDENCE

The appellant certifies that the following evidence is required for the appeal, in the appellant's opinion:

1. The entire record before the Ontario Energy Board with respect to the Board's final decision and order dated July 25, 2011.

August 24, 2011

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TO:**Mark Murray**

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Divisional Court

PROCEEDING COMMENCED AT Toronto

CERTIFICATE OF EVIDENCE

Service of a true copy hereof
admitted this ____ day of August,
2011

By: _____
Counsel for the _____

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