

EB-2011-0076
EB-2011-0077
EB-2011-0078
EB-2011-0285

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B; and in particular sections 36.1(1), 38(1), 40(1), 90(1), thereof;

AND IN THE MATTER OF an application by Tribute Resources Inc. for an Order designating the areas known as the Stanley 4-7-XI Pool and the Bayfield Pool, in the County of Huron, as gas storage areas;

AND IN THE MATTER OF an application by Tribute Resources Inc. for authority to inject gas into, store gas in and remove gas from the areas designated as the Stanley 4-7-XI Pool and the Bayfield Pool and to enter into and upon the lands in the said areas and use the land for such purposes;

AND IN THE MATTER OF an application by Tribute Resources Inc. to the Ministry of Natural Resources for a license to drill wells in the said areas;

AND IN THE MATTER OF an application by Tribute Resources Inc. for an Order granting leave to construct natural gas pipelines in the County of Huron and in the County of Middlesex;

AND IN THE MATTER OF an application by Tribute Resources Inc. for a determination in respect of the compensation payable under Section 38 of the *Ontario Energy Board Act, 1998*.

**ANSWERS TO INTERROGATORIES OF TRIBUTE RESOURCES INC. AND
BAYFIELD RESOURCES INC. (COLLECTIVELY “TRIBUTE”) TO THE
EVIDENCE OF THE CORPORATION OF THE MUNICIPALITY OF BLUEWATER
 (“BLUEWATER”)**

AUGUST 22, 2012

FROM: The Corporation of the Municipality of Bluewater
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Interrogatory #1

Reference: Issues List—Issues 4.3, 4.6, 4.7 and 4.8

Reference: Evidence of Bluewater, paragraph 7:

Bluewater and Tribute do not have an access agreement that is in force allowing Tribute access (for vehicles, equipment, pipeline, structures, or otherwise) or other property interests in, on, or over the access lane located on the Bayfield STF Lands, and Bluewater considers that such an agreement is required.

Question:

When Bluewater (through its predecessor The Corporation of the Village of Bayfield) purchased the Bayfield STF Lands in 1999 was it aware that its title to the Bayfield STF Lands was subject to the following pre-existing agreements:

- (a) To a Gas Storage Lease Agreement dated March 27, 1979 and registered on December 8, 1982 as Instrument No. R200938 between William Gordon Porter & Nancy Charlene Porter as Lessor and James M. Harmon as Lessee (the “GSL”) (see copy at Tribute’s Pre-filed Evidence, Binder 3, Tab E7);
- (b) To a Petroleum and Natural Gas Lease and Grant dated March 22, 1996 and registered on October 25, 1996 as Instrument No. R312832 between William Gordon Porter & Nancy Charlene Porter as Lessor and Paragon Petroleum Corporation as Lessee (the “PNG Lease”) (see copy at Tribute’s Pre-filed Evidence, Binder 3, Tab E5); and
- (c) To a Unit Operation Agreement dated March 22, 1996 and registered on December 18, 1996 as Instrument No. R314210 between William Gordon Porter & Nancy Charlene Porter as Lessor and Paragon Petroleum Corporation as Lessee (the “UOA”) (see copy at Tribute’s Pre-filed Evidence, Binder 3, Tab E6).

Answer:

With the passage of time and the disruptions caused by municipal amalgamations, it is difficult to be definitive as to what Bluewater’s predecessor may or may not have been aware at the time that it or its predecessors purchased what has become the Bayfield STF Lands. We note, however, that whatever Bluewater’s predecessor may or may not have been aware does not alter

the fact that, as stated in paragraph 7 of Mr. McAuley's affidavit, that Bluewater and Tribute *do not now have* an access agreement that is in force allowing Tribute access (for vehicles, equipment, pipeline, structures, or otherwise) or other property interests in, on, or over the access lane located in the Bayfield STF Lands, *and Bluewater considers that such an agreement is required*. Nonetheless, Bluewater is prepared to enter into good faith negotiations with Tribute in respect of such an agreement.

The Parcel Register sets out the registered documents (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit "A"; Bluewater Answers to Interrogatories, Tab 2, p.35).

Bluewater (through a predecessor the Corporation of the Village of Bayfield) acquired lands part of which now form the Bayfield STF Lands on the 15th of November 1999, from William Gordon Porter and Nancy Charlene Porter, registered as Instrument Number R338076, as set out on the parcel register for the Bayfield STF Lands (Bluewater Answers to Interrogatories Tab 2 p. 35 and Tab 14 p. 121; Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit "A"; Tribute Evidence, Binder 3, E4, pages 3-6) (the "Bayfield STF Deed").

The "Property" (as defined in the Bayfield STF Deed, Bluewater Answers to Interrogatories Tab 14 p. 121, Tribute Evidence Binder 3, E4, page 3) that Bluewater acquired was all of Lot 7, Bayfield Road North Concession, Township of Stanley, County of Huron, save and except the south 17 feet thereof, and subject to (i) an easement over Part 1, Plan 22R-1760 and (ii) the reservation by the William Porter and Nancy Porter of the mineral, oil, gas, and gas storage rights as set out in the Schedule to the Bayfield STF Deed (Bluewater Answers to Interrogatories

Tab 14 p. 121; Tribute Evidence Binder 3, E4, page 4). The term “Rights” is broadly defined (section 1 of the Bayfield STF Deed, Bluewater Answers to Interrogatories, Tab 14 p. 122; Tribute Evidence Binder 3, E4, page 4) and that once the existing easements, including those for the gas well pipelines and laneway access to the gas well expire, that anyone wishing to enter the Property for matters relating to the Rights will require the written permission of Bluewater (section 3 of the Bayfield STF Deed, Bluewater Answers to Interrogatories, Tab 14, p. 122; Tribute Evidence Binder 3, E4, page 4). No such written permission has been given and is in force.

Relevant excerpts of the Terms and Conditions of the reservation of the mineral, oil, gas, and gas storage rights follow (Bluewater Answers to Interrogatories, Tab 14, p. 122; Tribute Evidence Binder 3, E4, page 4):

1. The Transferors hereby reserve all right, title, and interest in, under, and to any the mineral, oil, gas and gas storage rights (the “Rights”) relating to the Property together with all revenues, rents, or other payments of any kind which may be payable from time to time relating to the Rights under any lease or other agreement by which the Transferors shall grant or assign all or any portion of the Rights to any person.
2. The Transferors hereby grant the Transferee a right of first refusal to purchase the Rights from the Transferee, which right of first refusal may be exercised by written notice by the Transferee to the Transferor within fifteen (15) business days following the receipt by the Transferee from the Transferor of written notice of the Transferors’ intention to sell, transfer or assign all or any portion of the Rights.
3. ...The Transferee shall co-operate fully with the lessees named in the leases and other agreements relating to the Rights in accordance with the terms and conditions of such leases and other agreement and shall not do any thing or take any step which has the effect or may have the effect of impairing such lessees ability to exercise their respective rights under such leases or agreements; provided, however, that once the existing easements, including those for the gas well pipelines and laneway access to the gas well

expire, that anyone wishing to enter onto the Property for matters relating to the Rights will require the written permission of the Transferee...

4. The terms of this reservation shall enure for the benefit of and shall be binding on the parties' successors, heirs, and assigns.

The instruments registered on title prior to the acquisition by Bluewater on the 15th of November 1999 include the following (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit "A"; Bluewater Answers to Interrogatories, Tab 2, p. 35):

- (1) The GSL between William Porter/Nancy Porter and James Harmon, dated the 27th of March 1979 and registered on title to the Bayfield STF Lands on 8 December 1982 as Instrument No. R200938 (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit "A"; Bluewater Answers to Interrogatories, Tab 4, p. 41; Tribute Evidence, Binder 3, E7, page 3). The term of the GSL was for ten years, subject to renewal in ten year increments (1989, 1999, 2009). By the time of the 2009 GSL renewal, Bluewater had acquired the Bayfield STF Lands (with all the rights and obligations as set out in the Bayfield STF Deed), and Bluewater had constructed and had for years been operating the Bayfield STF.
- (2) An assignment of leases from James Harmon to Tipperary Resources Limited (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit "A"; Bluewater Answers to Interrogatories, Tab 5, p. 50).
- (3) Reference Plan 22R-1760 (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit "A"; Bluewater Answers to Interrogatories, Tab 6, p. 56).

(4) An agreement dated 20 June 1984 respecting a right of way/grant of easement (the “Bayfield STF Easement”) made between Gordon Porter/Nancy Porter and Tipperary Resources Limited and Stanley Reef Resources Limited and registered as R212930 (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit “A”; Bluewater Answers to Interrogatories, Tab 7, p. 57).

The easement related to Part 1 on Plan 22R-1760 (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit “A”; Bluewater Answers to Interrogatories, Tab 6, p. 56). The term of the easement was 20 years (section 1 of the Bayfield STF Easement, Tab 7, page 59). The easement then expired on the 20th of June 2004. This easement is specifically referenced in the property description as defined in the Bayfield STF Deed (Bluewater Answers to Interrogatories Tab 14, p. 121, Tribute Evidence Binder 3, E4, page 3). Section 3 of the Schedule to the Bayfield STF Deed provides that “once the existing easements, including those for the gas well pipelines and laneway access to the gas well expire, that anyone wishing to enter onto the Property for matters relating to the Rights will require the written permission of the Transferee (Bluewater Answers to Interrogatories Tab 14, p. 122).

Subsequent to Bluewater’s acquisition of the Bayfield STF Lands, on the expiry of this first agreement, a further agreement was entered into between Bluewater and Clearbeach Resources Inc., effective as of the 20th day of June 2004 (Bluewater Evidence, Affidavit

of Mr. McAuley, paragraph 3, Exhibit “A”; Bluewater Answers to Interrogatories, Tab 20, p. 151). This lease expired on the 20th of June 2009.

On the expiry of this lease, Tribute sent a further draft agreement to Bluewater in 2009 (Bluewater Answers to Interrogatories, Tab 24, p. 185). Bluewater did not enter into this agreement, and Tribute and Bluewater have not entered into any such further agreement.

(5) The PNG Lease between William Porter/Nancy Porter dated 22 March 1996 and registered on 25 October 1996 as Instrument No. R312832 (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit “A”; Bluewater Answers to Interrogatories, Tab 8, p. 65; Tribute Evidence, Binder 3, E5, page 3). The primary term is stated to be for five years (expiring 22 March 2001), and continuing so long thereafter as operations are conducted on the lands, the pooled lands or the utilized lands, with no cessation, the in case of each cessation of operations of more than 90 consecutive days (Bluewater Answers to Interrogatories, Tab 8, p. 67; Tribute Evidence, Binder 3, E5, page 5). By the time of the 2001 PNG Lease renewal, Bluewater had acquired the Bayfield STF Lands (with all the rights and obligations as set out in the Bayfield STF Deed), with construction of the Bayfield STF being between 2000 and 2001.

(6) The UOA between William Porter/Nancy Porter and Paragon Petroleum Corporation and Farm Credit Corporation dated 22 March 1996 and registered on 18 December 1996 as Instrument No. R314210 (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3,

Exhibit “A”; Bluewater Answers to Interrogatories, Tab 9, p. 76; Tribute Evidence, Binder 3, E6, page 3), which in terms of term, is tied to the PNG Lease set out above.

(7) A general assignment dated 1 February 1998 and registered 3 March 1999 as Instrument No. R332443 (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit “A”, Bluewater Answers to Interrogatories, Tab 10, p.89). The assignment from Clearkip Gas Inc. to Tribute Resources Inc. includes the Bayfield STF Easement referenced above (Bluewater Answers to Interrogatories, Tab 10, p. 94).

(8) An assignment dated 1 January 1998 and registered 3 March 1999 as Instrument No. R332444 (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit “A”; Bluewater Answers to Interrogatories, Tab 11, p. 98). The assignment from Paragon Petroleum Corporation to Clearkip Gas Inc. includes the Bayfield STF Easement referenced above (Bluewater Answers to Interrogatories, Tab 11, p. 103).

We note that the assignments described in (7) and (8) immediately above do not appear to have been registered in the correct sequence.

(9) An assignment dated 1 February 1999 and registered 1 April 1999 as Instrument No. R332966 (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit “A”, (Bluewater Answers to Interrogatories, Tab 12, p. 107). The assignment from Paragon Petroleum Corporation to Northrock Resources Ltd. includes the GSL, PNG, and UOA.

(10) A lease dated 20 June 1999 and registered on 9 November 1999 as Instrument No. R337957 (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit “A”; (Bluewater Answers to Interrogatories, Tab 13, p. 115). The lease between the Porters and Northrock Resources Ltd. relates to the Bayfield STF Easement Lands. Bluewater acquired ownership on 15 November 1999 (the Bayfield STF Deed) and the lease expired on the 20th of June 2004.

As referenced above, Bluewater then acquired the lands now forming the Bayfield STF Lands pursuant to the Bayfield STF Deed (Bluewater Answers to Interrogatories Tab 2, p. 35 and Tab 14 p. 121; Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit “A”; Tribute Evidence, Binder 3, E4), including the right that once the existing easements, including those for the gas well pipelines and laneway access to the gas well expire, *that anyone wishing to enter the Property for matters relating to the Rights will require the written permission of Bluewater* (section 4 of the Bayfield STF Deed). *The Bayfield STF Easement expired* (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit “A”; Bluewater Answers to Interrogatories, Tab 6 p. 56, Tab 7 p. 57, Tab 20 p. 151, Tab 24 p. 185). *No such written permission has been given and is in force. Further assignments occurred after Bluewater acquired the Bayfield STF Lands (see answer to Interrogatory #2) and constructed the Bayfield STF.*

Interrogatory #2

Reference: Issues List—Issues 4.3, 4.6, 4.7 and 4.8

Reference: Evidence of Bluewater, paragraph 7:

Bluewater and Tribute do not have an access agreement that is in force allowing Tribute access (for vehicles, equipment, pipeline, structures, or otherwise) or other property interests in, on, or over the access lane located on the Bayfield STF Lands, and Bluewater considers that such an agreement is required.

Question:

Is Bluewater aware that the GSL, the PNG Lease and the UOA have all been assigned to Tribute by two Assignments each dated May 10, 2007 and each registered on May 31, 2007 as Instrument Nos. HC39044 and HC39050?

Answer:

Bluewater is aware of an assignment from Clearbeach Resources Inc. to Tribute Resources Inc. of interests in the GSL, PNG Lease, and UOA dated 10 May 2007 and registered as Instrument No. HC39046 (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit “A”; Bluewater Answers to Interrogatories, Tab 21, p. 156) and we note that at page 161 in the Description of Lands column, the assignment is subject to Bluewater’s interest in R338076 (the Bayfield STF Deed) and R21930 (the Bayfield STF Easement). Bluewater is aware of an assignment from Avenue Energy Limited Partnership to Tribute Resources Inc. of interests in the GSL, PNG Lease, and UOA dated 10 May 2007 and registered as instrument No. HC39050 (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit “A”; Bluewater Answers to Interrogatories, Tab 22, p. 166) and we note that a page 171 in the Description of Lands column, the assignment is subject to Bluewater’s interest in R338076 (the Bayfield STF Deed) and R21930 (the Bayfield STF Easement).

Bluewater is also aware that in the chain of assignments, Clearbeach Resources Inc. and Avenue Energy Limited Partnership acquired their rights from Talisman Energy Inc. (See LT21811: Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit “A”; Bluewater Answers to Interrogatories, Tab 18, p. 139). Talisman Energy Inc. acquired its rights from William Porter/Nancy Porter (See LT19333: Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit “A”; Bluewater Answers to Interrogatories, Tab 17, p. 134) and Northrock Resources Ltd. (See LT15621: (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit “A”; Bluewater Answers to Interrogatories, Tab 16, p. 126), all of which were subject to Bluewater’s interest in R338076 (the Bayfield STF Deed) and R21930 (the Bayfield STF Easement).

Interrogatory #3

Reference: Issues List—Issues 4.3, 4.6, 4.7 and 4.8

Reference: Evidence of Bluewater, paragraph 7:

Bluewater and Tribute do not have an access agreement that is in force allowing Tribute access (for vehicles, equipment, pipeline, structures, or otherwise) or other property interests in, on, or over the access lane located on the Bayfield STF Lands, and Bluewater considers that such an agreement is required.

Question:

Is Bluewater aware that its ownership rights and surface rights in respect of the Bayfield STF Lands are subject to the prior rights of Tribute pursuant to the GSL, the PNG Lease, and the UOA?

Answer:

No. Bluewater is aware of its ownership rights and surface rights in respect of the Bayfield STF Lands as set out in the registered instruments and as described in answer to interrogatories #1 and #2, above. Bluewater is also aware of its rights as a Municipal Corporation and its rights in respect of the Bayfield STF Lands and as the owner and operator of the sewage treatment facility serving its residents in the vicinity of Bayfield, located and operating on the Bayfield STF Lands.

Interrogatory #4

Reference: Issues List—Issues 4.3, 4.6, 4.7 and 4.8

Reference: Evidence of Bluewater, paragraph 7:

Bluewater and Tribute do not have an access agreement that is in force allowing Tribute access (for vehicles, equipment, pipeline, structures, or otherwise) or other property interests in, on, or over the access lane located on the Bayfield STF Lands, and Bluewater considers that such an agreement is required.

Question:

The GSL provides in part as follows:

“And for the consideration, rentals and payments aforesaid, the Lessor doth also hereby give and grant unto Lessee insofar as the Lessor has the right to grant the same, the right, liberty and privilege in, upon or across the surface of the demised lands to drill wells, to re-work, operate or abandon any and all wells now or hereinafter drilled on the demised lands, to lay down, construct, operate, maintain, inspect, remove, replace, reconstruct and repair roadways, pipes or pipelines, tanks, stations, structures, compressors and equipment necessary or incidental to the operations of the Lessee hereinbefore described; together with the right of withdrawing from the demised lands and of selling or otherwise disposing of the same, all such waters, salts, minerals and other substances as may be necessary to allow the injection and storage of gas therein and with the right of entering upon, using and occupying so much of the surface of the demised lands as may be necessary or convenient to carry out such operations and to fence any portion of the surface of the demised lands used by the Lessee.

2. That the Lessor has good title to the lands as hereinbefore set forth, has good right and full power to lease the demised lands, rights and privileges in the manner aforesaid and that the Lessee upon performing and observing the covenants and conditions on the Lessee’s part herein contained shall and may peacefully possess and enjoy the demised lands and the rights and privileges hereby granted during the said term and any renewal thereof without any interruption or disturbance from or by the Lessor or by any person whomsoever claiming under the Lessor.

23. Subject as hereinbefore provided, this Agreement shall enure to the benefit of and be binding upon the parties hereto and each of them, their respective heirs, executors, administrators and assigns.”

In light of the foregoing quoted portions of the GSL which has been assigned to Tribute, does Bluewater still maintain that Tribute does not have any access rights to the Bayfield STF Lands for the purpose of permitting vehicles, equipment, pipelines, structures or otherwise to be constructed on the Bayfield STF Lands in furtherance of Tribute’s proposed storage operations? If the answer to this question is negative please provide full and complete details and reasons together with copies of any and all relevant documentation upon which Bluewater is relying to maintain its position.

Answer

For all the reasons and with reference to all the documents set out in answers to interrogatories 1, 2, and 3, above, and with particular reference to the rights and obligations flowing from the Bayfield STF Deed, Bluewater maintains that Bluewater and Tribute do not now have an access agreement that is in force allowing Tribute access (for vehicles, equipment, pipeline, structures, or otherwise) or other property interests in, on, or over the access lane located in the Bayfield STF Lands, and Bluewater considers that such an agreement is required. As stated above, Bluewater is prepared to enter into good faith negotiations with Tribute in respect of such an agreement.

In addition, any right that Tribute may have to develop the Bayfield DSA is subject to obtaining the approval of the Ontario Energy Board. In Bluewater’s view, it is not in the public interest to permit a natural gas development in a manner that may impair the structure and function of the

Bayfield STF, and thereby potentially or actually jeopardize the environment, health and safety of its citizens.

We further note that in Tribute's answers to its Bluewater's interrogatories, filed prior to Bluewater's evidence, that according to Tribute:

- (1) As long as the Bayfield STF will not eventually expand down to Mill Road, the Bayfield gas storage facility and wells will not adversely affect any of the Bayfield STF facilities (Answer to Question 2);
- (2) The proposed wells will have no adverse impact on the Bayfield STF and no adverse impact on access to the Bayfield STF (Answers 3(a)(ii) and (ii));
- (3) With reference to the access lane to the Bayfield STF, that a Road Users Agreement will be entered into between Bayfield Pipeline Corp and the Municipality of Bluewater. This Road Users Agreement will detail the pipeline running line location relative to other utilities located in municipality road allowances, depth of burial, profile drawings for critical areas along the right-of-way and for all road crossings, construction methods and traffic control and any compensation due (Answer 3(1)(iv)); and
- (4) Tribute will ensure that there will be no impact of the Applications and the Construction of a Natural Gas Pipeline on the existing and future operations of the Bayfield STF (Answer 5(i)), and if there is an impact that Tribute and its affiliates will work to remedy the situation immediately (Answer 5(iii)).

Interrogatory #5

Reference: Issues List—Issues 4.3, 4.6, 4.7 and 4.8

Reference: Evidence of Bluewater, paragraph 7:

Bluewater and Tribute do not have an access agreement that is in force allowing Tribute access (for vehicles, equipment, pipeline, structures, or otherwise) or other property interests in, on, or over the access lane located on the Bayfield STF Lands, and Bluewater considers that such an agreement is required.

Question:

When Bluewater constructed the Bayfield STF on the Bayfield STF Lands was it aware that Tribute (or its predecessors in title) had prior registered surface rights to use the Bayfield STF Lands pursuant to the GSL, the PNG Lease and the UOA? When was the Bayfield STF constructed?

Answer:

The Bayfield STF was constructed in 2000-2001. In terms of what Bluewater was aware, see answers to Interrogatories #1 to #4.

Interrogatory #6

Reference: Issues List—Issues 4.3, 4.6, 4.7 and 4.8

Reference: Evidence of Bluewater, paragraph 7:

Bluewater and Tribute do not have an access agreement that is in force allowing Tribute access (for vehicles, equipment, pipeline, structures, or otherwise) or other property interests in, on, or over the access lane located on the Bayfield STF Lands, and Bluewater considers that such an agreement is required.

Question:

Is Bluewater aware of the terms and conditions of the mineral rights reservation that was contained in the Transfer of the Bayfield STF Lands registered on November 15, 1999 as Instrument No. 338076 from William Gordon Porter & Nancy Charlene Porter to the Corporation of the Village of Bayfield (Bluewater's predecessor) (see copy at Tribute's Pre-filed Evidence, Binder 3, Tab E4). As a supplementary question, what does Bluewater understand by the following phrase contained in the said Transfer:

"The Transferee shall cooperate fully with the lessees named in the leases and other agreements relating to the Rights in accordance with the terms and conditions of such leases and other agreements and shall not do anything or take any step which has the effect or may have the effect of impairing such lessee's ability to exercise their respective rights under such leases or agreements;"?

Answer

Bluewater is aware of the Bayfield STF Deed, as set out in its answer to Interrogatory #1.

Bluewater is also aware that in this Interrogatory Tribute has not fully excerpted the operative part of section 3 of the Bayfield STF Deed, with the proviso not included by Tribute set out below in italics:

3. The Transferee shall co-operate fully with the lessees named in the leases and other agreements relating to the Rights in accordance with the terms and conditions of such leases and other agreement and shall not do any thing or take any step which has the effect or may have the effect of impairing such lessees ability to exercise their respective

rights under such leases or agreements; *provided, however, that once the existing easements, including those for the gas well pipelines and laneway access to the gas well expire, that anyone wishing to enter onto the Property for matters relating to the Rights will require the written permission of the Transferee...* (emphasis added).

As set out in answer to Interrogatories #1, #2, #3, and #4, and with specific reference to section 3 of the Bayfield STF Deed (Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit “A”; Bluewater Answers to Interrogatories, Tab 14, p. 121 at p. 122), Bluewater understands that the phrase highlighted by Tribute is subject to the requirement that once the existing easements, including those for the gas well pipelines and laneway access to the gas well expire, that anyone wishing to enter onto the Property for matters relating to the Rights will require the written permission of Bluewater, that the easements have expired, that there is no such written permission in force, and as a result that an agreement with Bluewater is required (see answers to interrogatories #1 and #2 above; Bluewater Answers to Interrogatories, Tab 6, p. 56, Tab 7 p. 57, Tab 20 p. 151, Tab 24, p. 185; Bluewater Evidence, Affidavit of Mr. McAuley, paragraph 7).

Interrogatory #7

Reference: Issues List—Issues 4.1 to 4.8 inclusive.

Reference: Evidence of Bluewater, paragraph 8:

Bluewater is also the owner of the road allowance for a portion of Tribute's proposed pipeline route. Bluewater and Tribute do not have a road user agreement that is in force respecting the use by Tribute of Bluewater's road allowance lands, and Bluewater considers that such an agreement is required.

Question:

We direct you to Tribute's Pre-filed Evidence, Binder 4, Tab D4-4 which is a letter dated October 9, 2009 from Bluewater to Tribute stating in part that "the Municipality has no reason at this time to object to the preferred routing for the pipeline; however, the following concerns have been identified and will need to be addressed by Tribute prior to final approval by the Municipality:...". In this letter Bluewater also sets out certain conditions that Tribute must satisfy. Is Bluewater still prepared to reiterate and stand by the terms of its October 9, 2009 letter? If the answer to this question is in the negative, please provide full and complete reasons as to why Bluewater's position has changed from that stated in its letter of October 9, 2009.

Answer:

Bluewater wrote this letter in reference to Tribute's predecessor Applications, which we understand are no longer before the Ontario Energy Board. Nonetheless, Bluewater's position is not materially different in respect of the Applications currently before the Ontario Energy Board.

Interrogatory #8

Reference: Issues List—Issues 4.1 to 4.8 inclusive.

Reference: Evidence of Bluewater, paragraph 8:

Bluewater is also the owner of the road allowance for a portion of Tribute's proposed pipeline route. Bluewater and Tribute do not have a road user agreement that is in force respecting the use by Tribute of Bluewater's road allowance lands, and Bluewater considers that such an agreement is required.

Question:

Does Bluewater have a pro forma road allowance agreement that it has used in the past to permit utilities, other persons or agencies to use road allowances in Bluewater? If the answer to this question is in the affirmative, please provide a copy of such pro forma agreement and is Bluewater prepared to enter into this form of agreement with Tribute provided the conditions and requirements set forth in Bluewater's letter of October 9, 2009 are complied with by Tribute?

Answer:

Bluewater has used a variety of agreements to address the use of its road allowance, depending on the circumstances. The use of Bluewater's road allowance by utilities is currently under review.

Interrogatory #9

Reference: Issues List—Issues 4.1 to 4.8 inclusive.

Reference: Evidence of Bluewater, paragraph 8:

Bluewater is also the owner of the road allowance for a portion of Tribute's proposed pipeline route. Bluewater and Tribute do not have a road user agreement that is in force respecting the use by Tribute of Bluewater's road allowance lands, and Bluewater considers that such an agreement is required.

Question:

Attached hereto as Schedule "1" is a pro forma road user agreement which Tribute proposes to enter into with Bluewater for the use of Bluewater's road allowance lands for the proposed pipeline route. Subject to Tribute complying with the conditions and requirements of Bluewater as set out in its letter of October 9, 2009 and subject to OEB approval, is Bluewater prepared to enter into this form of agreement with Tribute for the proposed pipeline? If not, please provide full and complete reasons making specific reference to the clauses in the attached pro forma document that Bluewater disagrees with and the changes the Bluewater requires in order to finalize a document that Bluewater is prepared to enter into or, in the alternative, please provide a copy of the pro forma road user agreement that Bluewater is prepared to enter into with Tribute.

Note: See Tab 25, p. 190 of Bluewater's answers to interrogatories for a copy of Tribute's pro forma road user agreement referenced in their question as Schedule "1" in this question.

Answer:

Bluewater is prepared to negotiate in good faith a road user agreement with Tribute. The road user agreement, if any, between Tribute and Bluewater requires a legislative act of Bluewater Council and cannot be negotiated in the context of, and with the limitations of, interrogatories.

Nonetheless, to move the process forward, in addition to the matters raised in Bluewater's letter dated October 9, 2009 (Tribute Evidence, Binder 4, D4-4), and in addition to the proviso that road user agreements for utility companies are under general review in Bluewater (which may

result in the requirement for consideration of an entirely new agreement with Tribute), we provide the following preliminary comments on the Draft Road User Agreement (the “Draft RUA”; see Tab 25 of Bluewater’s Answers to Interrogatories, p. 190 and following) proposed by Tribute, which may be added to and/or subtracted from following further review by Bluewater staff, Bluewater’s consultants, and on direction of Bluewater Council, as matters are clarified and negotiations proceed:

(1) Key aspects in the Draft RUA that are critically deficient and/or faulty include the following:

(a) Term of the Draft RUA (Section 1):

- (i) The Draft RUA sets out a term of twenty (20) years. To protect the integrity and flexibility in the use and occupation of its road allowances, Bluewater generally prefers to license the occupation and use of its road allowances for a (more) limited term or reflect such use and occupation in limited easement rights, subject to the right to end such occupation and use at any time and at the sole discretion of Bluewater and without recourse or penalty to Bluewater;
- (ii) Section 1 contemplates the Company and the Municipality using reasonable commercial efforts to negotiate a further term of the Draft RUA. Bluewater prefers that this requirement be deleted, as Bluewater does not wish to have anything this a Draft RUA that may fetter the discretion of a future Council.

(b) Tribute's Rights in the Draft RUA (Section 2):

- (i) As referenced above, to protect the integrity and flexibility in the use and occupation of its road allowances, Bluewater prefers to grant limited rights rather than general easements for the use and occupation of its road allowances. This concern applies throughout the Draft RUA, wherever the term "easement" is used.
- (ii) Bluewater has obligations to various stakeholders in the community. Any right by Tribute pursuant to a Draft RUA to use and occupy a Bluewater road allowance must clearly be stated as a non-exclusive right.
- (iii) Tribute has not identified the specific locations within Bluewater's road allowances wherein it will require its works to be installed. Schedule "A" has been left blank by Tribute. Further information needs to be supplied by Tribute for this section to be properly evaluated.

(c) Payments by Tribute (Section 3):

- (i) The payments by the Company to Bluewater have been left blank by Tribute. Further information as to what is proposed by Tribute needs to be supplied by Tribute for this section to be properly evaluated. Further, Tribute should indemnify Bluewater for its costs in relation to the preparation, negotiation, and enforcement of this agreement.

(d) Security Deposit (Section 4):

- (i) Without Tribute's details of its proposed work within the Bluewater road allowances together with an estimate of the costs to remove Tribute's works, it is not possible to accurately estimate the appropriate amount of the Company's security deposit. Further information needs to be supplied by Tribute for this section to be properly evaluated. However, at first blush, the amount of \$100,000 seems to understate the required amount.
- (ii) To protect the integrity of its road allowances and its financial position, Bluewater should have broad recourse to this security deposit (see e.g. revisions to sections 12, 20, 21, and 22).

(e) Insurance Requirement (Section 18):

- (i) Without Tribute's details of its proposed work within the Bluewater road allowances, it is not possible to accurately estimate the appropriate amount of the Company's insurance requirement. Further information needs to be supplied by Tribute for this section to be properly evaluated. However, at first blush, the amount of \$5,000,000 seems to understate the required amount.
- (ii) Once Tribute is able to provide details of its proposed work within the Bluewater road allowances and can provide a proposed policy then the Company's proposed policy can be reviewed with Bluewater's insurer.

(f) Succession and Assignment (Sections 19(c), 25(c), 25(g)):

(i) To protect the integrity of the road allowance and the financial position of the municipality, the nature of the rights should be a personal, and unlike the position taken in the draft RUA, should not be assignable by the Company.

(2) Other items in the Draft RUA that are deficient and/or faulty and/or require revision include the following:

- (a) In the second recital, Tribute represents that the Company has applied to the Municipality for permission to install, construct, maintain, and operate natural gas pipelines and related facilities within Bluewater's Road Allowances. Bluewater is aware of Tribute's intentions through this process before the Ontario Energy Board, but is unaware of any formal application made by the Company to Bluewater.
- (b) Section 5 references the Work Permit. The details of the requirements of the Work Permit should be considered once Tribute has supplied the further information relating to its proposed works. Section 5 apparently limits the Company's obligations to the "reasonable requirements of the Municipal Engineer". This is an impermissible limitation on the rights and obligations of the Municipal Engineer, as the decision should be in Bluewater's complete discretion, consistent with the remainder of the section.

- (c) In section 6 the Company agrees to install the gas main and appurtenances within 0.15 metre of the location specified in the Work Permit and plans. Without the information from Tribute as to the specific locations within Bluewater's road allowances of its proposed works, Bluewater is unable to evaluate whether this latitude is reasonable. As above, further information from Tribute is required.
- (d) In section 8, the limitation to "reasonable" time or times as the Municipality should specify should be removed. This is an impermissible limitation on the rights and obligations of the Municipality.
- (e) In section 8, the reference to "unnecessary" nuisance or damage to the Municipality or its property or to any ratepayers or users of Bluewater's road allowance should be removed. To protect its citizens as well as its own property and infrastructure, all work should be undertaken and completed in such a manner so as not to cause nuisance or damage to the Municipality or its property or to any ratepayers or users of Bluewater's Road Allowance.
- (f) To protect its citizens and Bluewater's own property, section 9 should be broadened to include other users and occupiers of Bluewater's road allowance and other neighbouring property owners.
- (g) Section 10(a) should be reworked to ensure that the Company's rights are non-exclusive, other users' or potential users' rights are not limited, and Bluewater's rights

to enter into further agreements with other users, at Bluewater's sole discretion, are not limited.

(h) To give proper effect to Section 10(b), it should be broadened to include the right of Bluewater to undertake such construction works.

(i) In section 11, it is unknown what is meant by the phrase "other public lands". Bluewater owns land in addition to its road allowances. To include "other public lands" would improperly broaden this agreement to an unknown scope. This should be removed.

(j) To protect the integrity and flexibility in the use and occupation of its road allowances as well as to protect the safety of its residents, Bluewater's rights in section 12 should be at its sole discretion, and not limited to the course of constructing, reconstructing, changing, altering, maintaining or improving any highway or any municipal works, or whether Bluewater deems it "necessary". Further, if the Company fails to remove its works in the time permitted or in the case of an emergency (as determined in Bluewater's sole discretion) then Bluewater requires the right to remove the works immediately and without notice, to restore the road allowance, to charge the costs to the Company and have recourse to the security deposit (section 4), and to be released, not be liable in any way for these actions, and be indemnified and saved harmless by the Company.

(k) In respect of the related sections 20, and 21 to protect the integrity and flexibility in the use and occupation of its road allowances as well as to protect the safety of its residents, in the case of an emergency (as determined in Bluewater's sole discretion) the Bluewater requires the right to remove the works immediately and without notice, to restore the road allowance, to charge the costs to the Company and have recourse to the security deposit (section 4), and to be released, not be liable in any way for these actions, and to be indemnified and saved harmless by the Company. Likewise, with respect to section 22, Bluewater should additionally have recourse to the security deposit (section 4) in relation to the costs of such works. Further, within 180 days of the termination of this agreement, the Company should remove all its works from Bluewater's road allowances, failing which Bluewater should have the right to remove the works, restore the road allowances, charge the costs to the Company and have recourse to the security deposit (section 4), and to be released, not be liable in any way for these actions, and to be indemnified and saved harmless by the Company.

(l) Section 13 should not be limited to the "surface of the travelled portion of the highway". To protect the integrity of its road allowances, no excavation, opening or work shall disturb or interfere with the road allowance unless a Work Permit has first been obtained from the Municipal Engineer authorizing such work, and all works shall be completed to his/her satisfaction.

- (m) To protect the integrity of its road allowances, section 13 should not be limited to the Municipality “acting reasonably”. The words “acting reasonably” should be removed.
- (n) To protect the integrity of its road allowances and to protect Bluewater against potential claims, the word “minimal” in section 14 should be removed and replaced with the word “no”. Further, in respect of any interference caused by the Company, its contractors or agents (or others under the Company’s direction or control) with the road allowance or any pedestrian, vehicular, or other traffic thereon, or any use or operation of any ditch or drain adjacent to such public right-of-way, highway, street, or walkway, the Company should make good any loss or damage and indemnify Bluewater.
- (o) In section 15, to protect the integrity of its road allowances and the financial resources of Bluewater, the limitation that the Company restore the road allowance surface to the extent possible and to the same condition as prior to the commencement of the works should be broadened to include the entire road allowance and the limitation of “to the extent possible” should be removed.
- (p) In section 15, the limitation of responsibility to “negligence” should be removed. To protect the integrity of its road allowances and the financial resources of the municipality, the Company should be responsible for any damage caused at any time the Company, its agents, employees, or contractors.

- (q) To protect the integrity of its road allowances, the limitation in section 17 to the “reasonable” directions and permissions of the Municipality should be removed. The Company’s actions should be in strict compliance with the directions and permissions as issued by Bluewater.
- (r) In the default provision section 19, to protect the financial position of the Municipality, default for failure to maintain insurance should be automatic and not subject to written notice and a 15 and 30 day requirement.
- (s) In the default provision section 19, to protect the financial position of the Municipality, the phrase “without recourse by or remedy to the Company” should be amended to “without recourse by or remedy by the Company”.
- (t) In the notice provision of section 25(a), to make this section more workable, we suggest that notice may also be given by fax, and that provision be made to amend the address for the giving of notice.

Interrogatory #10

Reference: Issues List, Issue 4.5

Reference: Evidence of Bluewater, clause 9 of the Affidavit of Stephen McAuley sworn on July 13, 2012:

Bluewater has not received from Tribute any professional expert evidence or assurance that Tribute's Applications can safely and harmoniously co-exist with wind power development in Bluewater. Given the existing proposed and possible future wind power development in the municipality, Bluewater considers that such expert evidence and assurances are required.

Question

Tribute repeats the quotation from its GSL as set out in Question 4 above. Given that it is Tribute's position that it legally holds valid surface rights over the Bayfield STF Lands and the other lands comprising of the proposed Bayfield DSA (which are held by similar storage lease provisions), does Bluewater not acknowledge and recognize that by virtue of Tribute's pre-existing surface rights that any subsequent proposed or possible future wind power development over the same lands would require some form of mutual co-existence or non-disturbance agreement to be negotiated between Tribute and the holder of the subsequent wind power development rights over the Bayfield DSA? Tribute hereby undertakes to seriously consider any requests from a company that acquires wind power development rights over the proposed Bayfield DSA, to negotiate in good faith and, provided that Tribute's proposed gas storage operations are not compromised, to negotiate a mutually agreeable mutual co-existence agreement or non-disturbance agreement with such company that acquires wind power development rights over the proposed Bayfield DSA subsequent to those now held by Tribute by virtue of its Gas Storage Lease. Does Bluewater accept this assurance recognizing at the same time Tribute does have prior legal registered surface rights over the proposed Bayfield DSA?

Answer

As set out in Bluewater's answers to interrogatories #1-#6, above, Bluewater does not agree with Tribute's characterization of its access development rights in respect of the Bayfield STF Lands. The assurance suggested to Tribute does not address Bluewater's concerns. Bluewater seeks to protect and foster the economic, social and environmental well-being of the municipality, the

health, safety and well-being of persons, and the protection of persons and property within the municipality. The concern with the safe and harmonious co-existence of the Tribute Applications with wind power development goes beyond the Bayfield STF Lands, and the Bayfield DSA and encompasses the road allowance and the municipality as a whole. The statement put to Bluewater in the interrogatory does not change the facts that Bluewater has not received from Tribute any professional expert evidence or assurance that Tribute's Applications can safely and harmoniously co-exist with wind power development in Bluewater and that given the existing proposed and possible future wind power development in the municipality, Bluewater considers that such expert evidence and assurances are required.

Interrogatory #11

Reference: Issues List, Issue 4.5

Reference: Evidence of Bluewater, clause 9 of the Affidavit of Stephen McAuley sworn on July 13, 2012:

Bluewater has not received from Tribute any professional expert evidence or assurance that Tribute's Applications can safely and harmoniously co-exist with wind power development in Bluewater. Given the existing proposed and possible future wind power development in the municipality, Bluewater considers that such expert evidence and assurances are required.

Question:

Please provide full and complete details of any easement agreements or option agreements in favour of wind power corporations that affect or are registered against title to Tribute's proposed designated storage area for the Bayfield Pool. If there are no such easement agreements or option agreements please explain how future wind power corporation that proposes to develop a wind farm covering lands comprising of the proposed designated storage area for the Bayfield Pool can acquire prior surface rights over such lands to those being enjoyed by Tribute and provide full and complete details of the same.

Answer:

The parcel register for the Bayfield STF Lands is set out in Bluewater's Evidence, Affidavit of Mr. McAuley, paragraph 3, Exhibit "A". Bluewater has not undertaken for the purposes of answering these interrogatories the further investigation of searching title for the remainder of the Bayfield DSA, and objects to doing so as this exercise is not relevant to Bluewater's evidence and Tribute may equally search title itself, if it has not already done so. Additionally, there may be other easement or option agreements in favour of wind power corporations that are not registered on title and of which Bluewater may not be advised, and in any event property rights and interests may change over time by operation of law or on consent of the stakeholders, as alluded to in Tribute's interrogatory #10 immediately above.