

Ontario Energy Board

EB-2011-0076

EB-2011-0077

EB-2011-0078

Argument-in-Chief of Tribute Resources Inc. and Bayfield Resources Inc.

on behalf of

Huron Bayfield Limited Partnership and Bayfield Pipeline Corp.

Introduction

On April 20, 2012, Tribute Resources Inc. and Bayfield Resources Inc., on behalf of the Huron Bayfield Limited Partnership and Bayfield Pipeline Corp., (“Tribute” or the “Applicants”), applied to the Ontario Energy Board (“Board” or “OEB”) pursuant to sections 36.1(1), 38(3), 40(1) and 90(1) of the OEB Act to allow Tribute to develop natural gas storage pools located in the geographic area of the County of Huron and in the County of Middlesex (the “Project”). The applications were amended and updated on August 4, 2011.

The Project includes the designation and development of two proposed gas storage pools in Huron County, the Stanley 4-7-XI Pool and the Bayfield Pool and the construction and operation of a transmission pipeline to connect these proposed storage pools with Union Gas Limited’s (“Union”) Dawn-Trafalgar pipeline system.

The OEB organized these applications as follows:

- a. Development of the Stanley Pool (EB-2011-0076)
- b. Development of the Bayfield Pool (EB-2011-0077)
- c. Leave to construct a Natural Gas Pipeline (EB-2011-0078)

Tribute is awaiting an imminent decision from Justice Rady of the Superior Court in respect of certain contract interpretation issues underlying the compensation issue for one party to the proceedings, after which and on request of the Applicants, the

Board may decide, if necessary, to proceed with the Request for Determination of Compensation (EB-2011-0258). This decision is expected to be released at any time.

Since 2006, the Applicants have been working at developing these underground storage pools and planning for the interconnecting pipeline to Union's transmission system at Lobo, Ontario. Significant activity, including extensive interaction with 9 of the 10 landowners over both pools, culminating in a successful agreement with Tribute, has been undertaken. Tribute submits this is important proof to the Board that there is a high level of support, cooperation and understanding between the Applicant and the landowners.

Also central to this case is the clear understanding between the Ministry of Natural Resources and the Applicants as to the boundaries and estimated capacity of the two storage pools. The evidence is uncontroverted that both pools are suitable for designation from a geological perspective as the cap rock testing of the Stanley Pool has proven, and the Bayfield Pool is substantially similar, with its porosity demonstrating excellent injection and withdrawal characteristics.

Given the various ongoing delays due to the litigation challenges, which the Applicant has and continues to face, Tribute is raising the exceptional possibility that the OEB consider issuing separate decisions in this case for each of the applications, so that the Applicant may move forward with the unchallenged applications and approvals, in the event there continue to be further appeals and delays to aspects of the case that are only related to the persistent litigation surrounding and delaying the development of the Stanley Pool.

Tribute hereby submits its Argument-in-Chief, relying on the written evidence submitted by it, reviewed by the parties to this proceeding and in response to the evidence of other parties to this proceeding. Tribute has organized this Argument following sequentially the Board's Issues List as outlined in those headings in Procedural Order #3 for ease of reference as it outlines its written submissions below.

1. Designation of the Gas Storage Pool

1.1 . *Is the underlying geological formation appropriate for storage operations?*

Tribute submits that the evidence is uncontroverted that the geological rock formations of both storage pools are appropriate for underground natural gas storage operations, to be developed in Ontario. The Ministry of Natural Resources (“MNR”) representatives have met with Tribute’s geologist and petroleum engineer for the purposes of reviewing the information pertaining, *inter alia*, to the core samples taken and the size of the pools. The MNR staff approved the technical data and the proposed DSA boundary based on that data, and provided their approval in the form of a “Record of Technical Data Reviewed for a Proposed Designated Gas Storage Area.” (Binder #2, B1-18, Page 29 of 31, Binder #3, B1-19, Page 30 of 32). Tribute’s geologist, Neil Hoey, opined that the Bayfield pool is a full pinnacle reef that is approximately 115 meters high. Hoey’s evidence is that the penetrating wells exhibited excellent gas flows indicative of very good porosity. In his conclusions, Hoey specifically states that the reef is overlain by 4.5 meters of anhydrite in one location and 2.8 meters of anhydrite at another well location “which provides an excellent caprock seal for the reservoir”. (Hoey: Binder 3, B1, page 10 of 32)

The Stanley pool is also a full pinnacle reef with a build-up that is approximately 105 meters high. Notwithstanding that some parts of the reef have been severely plugged with salt, “two wells penetrating the reef exhibited excellent gas flows, indicative of very good porosity and permeability within portions of the reef”. (Hoey: Binder 2, B1, page 10 of 31).

According to the evidence of the geologist, for both the Stanley and Bayfield pools, these rock formations exhibit the necessary porosity to allow for gas injection and withdrawal, which is a necessary prerequisite for storage pools to function from early commissioning to full operation. Both the Bayfield and Stanley pools are very similar to the operating Tipperary gas storage pool.

Both of the pools have a continuous A2 Anhydrite cap rock above the proposed storage pools. This cap rock has been cored and analyzed for the Stanley pool and will be cored in the first Bayfield pool well drilled. Based on the Stanley pool cap rock core and other cap rock cores in the area, the A2 Anhydrite cap rock provides a seal

on top of the storage pools, allowing the pools to be re-pressured without risk of gas leakage (Binder #2, C1, Page 35 of 75).

Tribute submits that these rock formations are therefore valuable provincial resources, worthy of permanent protection through the provincial regulatory designation process and confirmed by way of legal regulation, irrespective of eventual evolving chain of ownership.

1.2. Is the tract of land to be designated appropriately bound and sized to provide for safe operation of the storage pool?

The tracts of land to be individually and separately designated for both the Bayfield and Stanley pools are not in dispute by the MNR and the Applicants, which parties to this proceeding reached agreement on the boundaries of the pool. There was no evidence lead by any other party to the proceeding that the tracts are not appropriately sized to provide for the safe operation of the pools.

McKinley Farms (“McKinley”) has indicated that it believes that it has a larger ownership interest in the Stanley pool (76%) versus the findings of the MNR and the results of the work undertaken by the Applicants (46%). However, McKinley did not lead any evidence to the contrary, other than its assertion based on historical allocation of proceeds from the gas production, nor has McKinley undertaken any third party geological work to prove its claim in evidence in these proceedings. The history of the Stanley pool is similar to that of Tipperary where the initial pool outlines established by unitization at the beginning of the production period change with additional information from a 3D seismic survey. In the case of Tipperary, as is proposed for Stanley, the final storage pool boundaries do not mirror the producing unitization boundaries.

Both Tribute and the MNR have reviewed the results of the 3D seismic survey and are in agreement on boundaries for the Bayfield and Stanley designated areas. In the absence of any such contrary or mitigating evidence by other parties, the Board should rely on the scientific evidence before it submitted by the Applicants, which work was reviewed independently and in the public interest and relied upon in reaching its conclusions by the MNR (MNR Record of Technical Data Reviewed for a

Proposed Designated Gas Storage Area – Jan 12, 2009, signed by Rudy Rybansky).

1.3. Is there a need for this incremental storage capacity in Ontario?

Tribute has carefully considered the issues surrounding this question in the Issues List in its response to Board Staff Interrogatory #1.3. Even at the end of this proceeding, Tribute remains convinced, based on its assessment of long term gas markets, that although the need for incremental storage capacity may not be financially or economically supported today by current market conditions, this could change, and is expected to change, in a few short years as the market readjusts.

Tribute submits that the OEB has broadly taken administrative notice of the realities of the impacts of the technical advances of formation fracing as it affects increasing the supplies of natural gas regionally into the marketplace. The Board is understandably cognizant of the recent remarkable variations of gas supply sources from the Marcellus shale in Ohio, Pennsylvania and New York states, which will require years to build new pipeline capacity through multiple jurisdictions. Supply conditions can change as well, but Tribute submits that storage will undoubtedly continue to be an important part of how Ontario manages its security of supply, irrespective of the source, particularly during the winter peak days and weeks. Storage is important for peak day deliveries, load balancing and arbitrage. More gas supply through Dawn supports more balancing and arbitrage opportunity.

It continues to be Tribute's business judgment and confidence that the long term storage supply scenarios will justify the expenditure of significant investor funds. However, given the 2006 development start date for these pools, it will likely take between 84 – 96 months to develop these pools to an in-service COD. Clearly, storage development takes time assuming that timing lines up with construction season windows. For example, a compressor ordered today would be delivered no earlier than 12 months, and with installation would not be available for service until a further 6 months. Well drilling activities could be completed no earlier than 24 months. Therefore, the earliest these pools could be brought into service would be 2015 – 2016 which could supply the 2016-2017 winter seasons.

It is prudent to temporarily defer the next major tranche of development funding and expenditures until there is more certainty in the ability to recover those funds over a longer horizon, while at the same time proceeding with seeking the regulatory approvals so the company is ready to move forward. Tribute submits this is prudent commercial practice to be ready, in hand with the necessary regulatory approvals, particularly as this market continues to deregulate into competitive circumstances.

While some parties to this proceeding might argue that an OEB designation on these pools seems premature, or promotes some inappropriate competitive advantage, effectively allowing a developer to 'sit on the pools' while their value theoretically increases, Tribute respectfully disagrees. Tribute has carried the full cost (and risk) of development to date, while the value of the projects actually decreased; to the extent that this timeframe is extended with a designation, there will be substantially more investment that is needed by Tribute to bring these projects on stream, and that investment comes at a cost to Tribute, no ratepayers, or other developer or party. On balance, Tribute submits that requesting approval of the applications in advance of the construction period is reasonable, and in the public interest, given the variability of the market conditions, all of which are beyond the Applicant's control.

Other than Tribute, no other storage developer in Huron County has brought an application to the OEB at this point, and it is noteworthy that even the Jacob pool that was approved by the Board has not been brought into service as yet. Tribute is a willing storage developer, interested in increasing capacity in Ontario, but needs flexible approvals to be sure these developments happen in an orderly manner that meet the Board's statutory objectives of ensuring a financially healthy and sustainable, energy sector.

There is no competitive advantage gained by Tribute as Tribute already owns the storage rights in the Stanley and Bayfield Pools. These Board approvals will allow Tribute to move ahead quickly when market conditions improve.

2. Authorization to Inject, Store and Withdraw

2.1. Is the applicant a capable prospective storage operator in terms of technical and financial capabilities to develop and operate the proposed storage facilities?

It is submitted that under the new competitive storage paradigm that the OEB established within the last decade, Tribute has adequately demonstrated its capability to become a successful storage developer and owner/operator. The Tipperary Gas storage facility was constructed by Tribute in 2007 – 2008. In December 2007, Tribute sold a 75% interest in Tipperary to Union, but was responsible for the construction of the facilities under a Development Agreement executed at that time. While Union is responsible for the actual physical operations of the storage facility on a daily basis, undertaking seasonal injections and withdrawals, maintenance etc., Tribute remains an active owner and is responsible for participating in the corporate management of the company and the storage facility, taking part in all major decisions including budgets and expenditures.

In this proceeding, Tribute has advised all parties that it intends to partner with Market Hub Partners, an experienced gas storage developer, corporately affiliated with Union and parent company Spectra Energy, to develop these projects. Tribute anticipates that it will work closely with Market Hub in the development of these projects, and as such, there is a high level of experience and competence that they will bring to these projects.

2.2. Will the appropriate safety requirements for proposed injection/withdrawal activities be ensured in accordance with all relevant codes and standards?

It is submitted that Tribute has adequately demonstrated its capability to become a successful storage developer and owner/operator, capable of ensuring that all the appropriate safety requirements for proposed injection/withdrawal activities will be followed in accordance with the relevant codes and standards. When the Tipperary Gas storage facility was constructed by Tribute in 2007 - 2008, it was Tribute which commissioned the entire facility before Union took over the daily injection and

withdrawal operations. Tribute anticipates that it will work closely with Market Hub in the development of the Bayfield and Stanley projects, after which it is likely that Market Hub will operate the two pools once a contractual Operations Agreement is negotiated and concluded.

2.3. Is the proposed maximum operating pressure safe?

Tribute is confident that the maximum operating pressures for both storage pools will be safe as set out in the evidence of Jim McIntosh, P.Eng, Tribute's principal engineer. Mr. McIntosh states (Binder 2, Stanley pool, C1, page 7 of 75; Binder 3, Bayfield pool, C1, page 7 of 61) that the maximum delta-Pressure for the Stanley pool will be 7412 kPaa or 1075 psia, and for the Bayfield pool 7219kPaa or 1047 psia, using a 30% safety factor, similar to other pools in Huron and Lambton counties.

The A2 Anhydrite cap rock immediately above the storage zone in both of the pools will provide an adequate seal to ensure that the storage reservoirs can withstand the proposed delta-pressures. The cap rock in the Stanley pool has been cored and analyzed, and the cap rock in the Bayfield pool will be cored and analyzed to confirm adequate pressure containment (Binder 2, Stanley pool, C2, page 6 of 43; Binder 2, Bayfield pool, C2, page 6 of 46). Analysis of cap rock cores from Stanley and similar pools in the area indicate that the A2 Anhydrite provides an excellent seal over the storage reservoir.

2.4. What are the potential impacts of injection/withdrawal activities on the integrity of the gas storage pool?

Based on the experience of the geological engineers and a wide variety of as yet undetermined pool characteristics and factors, it is anticipated that the potential impacts of the injection/withdrawal activities on the integrity of the pools and wells "will only be known once the Stanley Pool is developed as a storage pool. The potential well requirements discussed here should be viewed as an estimated well count requirement only" (Binder 2, C1, page 11 of 75).

Tribute submits that each pool has its own inherent characteristics and performance attributes depending on matters such as in-situ drilling fluids, water in the rock formation, porosity, etc., and each of these characteristics may be affected by the number and types of injection and withdrawal wells that are drilled and put into use. Withdrawals that might be made under excess suction can damage the pool due to 'water coning', and as such must be avoided. Tribute will monitor the injections and withdrawals carefully so as not to damage the rock formation.

Assuming the maximum pool operating pressures are respected with the 30% safety factor in place, Tribute submits that the pools can be operated without adverse impacts on the integrity of the gas storage pool. Cap rock core studies performed by AGAT Laboratories of Calgary, confirmed that the A2 Anhydrite cap rock of the Stanley reef would in no way be compromised by maximum pool operating pressures. The Bayfield pool cap has not yet been cored and tested, however the geological evidence in this proceeding is clear that similar cap rock properties would be expected.

2.5 Is the applicant appropriately accountable and for losses or damages caused by its activities? In particular, will the appropriate insurance coverage be in effect prior to construction/operation commencement?

The combined experience of Tribute, Market Hub and its affiliate Union clearly demonstrates that each and every one of these organizations has the capacity to engage in gas storage development activities in Ontario and operate these facilities in accordance with all applicable technical standards. The Applicant's commitment in this case as stated in the evidence (IR Question 2.5 from the Huron County Federation of Agriculture) is to carry at all times the appropriate level of insurance coverage prior to the commencement of construction, and during all commissioning and operations phases. Tribute made these commitments to the OEB and the landowners during the development of the Tipperary gas storage facility, and the commitments were carried out following an insurance study undertaken by the Applicant. Subsequently, as Tribute's partner, Union, became involved, the insurance coverage was procured and managed by Union. Irrespective of which

party ultimately operates the Bayfield and Stanley pools, the Applicant has committed to carry the appropriate levels of insurance to manage any incidents that may be foreseen.

Additionally, the Applicant and the landowners reached an agreement that the Applicant would carry the abovementioned appropriate levels of insurance. Further, Tribute agreed that a mitigation plan would be implemented if there were any interruptions to water supply to farm operations, as per the *Comprehensive Settlement Agreement* (Binder #1, Tab F3, page 3 of 11).

3. Well Drilling Licence

3.1 Does the geological evidence support the proposed well locations and drilling programs?

Tribute submits that the geological evidence submitted, after much examination and evaluation, supports the proposed well locations and drilling programs. A 3D seismic program conducted over each of the pools provided clear evidence as to the structure and outline of the reefs, allowing precise positioning of each of the proposed wells. Messrs. Hoey and McIntosh worked closely with other Tribute staff and outside professionals to ensure that the programs were appropriately peer-reviewed and tested. The anhydrite cap rock testing was conducted by AGAT Laboratories of Calgary, with positive results.

3.2 Are the proposed storage wells appropriately designed? Are construction and maintenance plans in order?

Tribute respectfully submits that the engineering and geological evaluations of the in-situ conditions and the customized design of the wells has been undertaken in a thorough and detailed manner, notwithstanding during the drilling operations, experience shows there may be some amendments to the drilling plans due to unforeseen circumstances. Evidence and drawings detailing the precise plans for casing and cementing the wells are before the Board and the MNR, which requires detailed plans and records for each well prior to the

MNR issuing a well licence and bonding being posted, which has already occurred (see “Tribute’s Answers to Questions Raised in the Huron County Federation of Agriculture’s Notice of Motion” dated September 17, 2012, Item #4). All well design, drilling, completion, and operating plans were created as required under CSA Z341: *Storage of Hydrocarbons in Underground Formations*, Ontario Oil, Gas, and Salt Resources Act, Ontario Oil, Gas, and Salt Resources Regulation 245/97 and the Ontario Oil, Gas, and Salt Resources Provincial Operating Standards.

It is submitted that the entire regulatory regime relating to drilling and monitoring gas wells in Ontario is set to ensure good planning and public safety, to which Tribute has and will continue to comply.

A review of the detailed and extensive planning evidence relating to known gas pressures and gradients, rock type, anticipated drilling conditions and operating parameters specified and submitted in Binders 2 and 3 illuminates the high level of expertise underlying each of the proposals and activities for bringing these pools into operation, and ultimately integrating them in to the Ontario and regional gas markets. No party to this proceeding has challenged these proposals on any realistic technical basis, including the MNR.

The petroleum engineer in this case, who provided written evidence and responses to interrogatories, has been clear that the pools will be operated safely, within all acceptable pressure levels and in accordance with industry practise.

3.3 Does the applicant have the technical capability to conduct the drilling in accordance with applicable standards and codes?

As described above, Tribute’s internal engineering and geological expertise confirms it has the technical capability to conduct the drilling in accordance with applicable standards and codes. Tribute is an experienced operator and has drilled and completed many wells in Ontario, including the two original storage wells, Tribute #22 and Tribute # 23, at Tipperary. Tribute

follows good oilfield practises and adheres to the regulations established by the MNR and the TSSA. Examiners and representatives of the MNR will be present at various times during the drilling to ensure and confirm that the Applicant is meeting all applicable standards and codes. As in the past, Tribute will be engaging an experienced drilling firm that is expert in every aspect of conducting the drilling, including horizontal well bores, and in preparations for setting and cementing and testing the multiple steel casings required to ensure permanent separation of water aquifers from all gas storage operations

3.4 Does the applicant propose an appropriate program to mitigate the environmental impacts and impacts on directly affected properties?

In preparation for these proceedings, and to assist throughout the stages of the development, with emphasis on the pipeline, Tribute engaged the services of Stantec Environmental Services. The evidence in this case which features appropriate programs and practises to mitigate environmental impacts and impacts on directly affected properties is contained in the Stantec Report filed at Binder #4, Tab E1.

No party to the proceedings has either challenged the Stantec Report, nor produced one of any similar comprehensive quality. Tribute submits that the Stantec Report should be relied upon by the OEB in reaching its conclusions that the Applicant, and its consultants, are capable of proposing mitigation programs, and carrying them out appropriately, in respect of environmental issues and ensuring directly affected properties are well treated during construction and fully remediated upon completion of all construction activities.

Stantec's comprehensive report is substantially similar to that which was produced and used throughout the Tipperary Gas storage development 5 years ago. This report will serve as a clear guide for all working on the project to adhere to the recommended practises.

Through a series of negotiations between all the landowners in the Bayfield pool and

most of the landowners in the Stanley pool, a *Comprehensive Settlement Agreement* was reached, which was filed in the evidence in this proceeding (Binder #1, Tab F3). That Settlement Agreement remains fully intact and will be honored in spirit and intent as well as in practise. That Agreement intends to ensure that each of Tribute's project participant landowners, and their lands, are well respected and treated during all stages of the project planning, construction and implementation.

McKinley Farms is welcome to join in the execution of this important Agreement at any time prior to and during the construction of the Stanley pool project.

4. Leave to Construct

4.1 Is there a need for the proposed pipelines and ancillary facilities?

Tribute submits and the evidence in the proceeding is clear that other than an existing NPS 4 gas production pipeline connecting just to Bayfield, there is no pipeline currently in place, or planned, other than the proposed project pipeline, which has the capacity to bring gas to inject into the storage pools, or take away the gas following withdrawals. The pipeline is therefore a necessary ancillary facility upon which the combined Bayfield and Stanley pools are fully dependent for their operations and economic viability. The pipeline is the lifeline to and from the pools.

The pipeline will be operated as a high pressure pipeline, almost exclusively installed in municipal road allowances. Each and every one of the lower tier municipalities has agreed to allow the pipeline to traverse its territory, and while most have written letters to confirm this understanding, some have expressed interest in executing Road Users Agreements prior to the construction commencing. The upper tier counties of Huron and Middlesex have been highly cooperative and, in the case of Middlesex, they are effectively waiting for an order of the Board to proceed to execution of a Road Users Agreement, the details of which have largely been completed, but vary slightly from one municipality to another depending on individual circumstances.

All the municipalities where the pipeline will traverse have been notified of these leave to construct proceedings; none has objected to the installation of the proposed pipeline, and all know that the construction is deferred for approximately 3-4 years. Tribute continues to work with each of the municipalities as the project evolves and recognizes that the more concentrated efforts with each of them will arise prior to the time when construction is imminent but during the final planning stages, when detailed drawings are undertaken with the most up to date information that can be taken into account.

The pipeline has been efficiently sized in accordance with specifications from the engineers based on throughput volume estimates and limited future growth potential as our new storage pools are brought on line in the future.

4.2 What are the environmental impacts associated with construction of the proposed pipelines and ancillary facilities and are they acceptable?

The Stantec Report referred to herein delineates in great detail the precise types of anticipated environmental impacts associated with construction of the proposed pipelines and ancillary facilities and specifies how to deal with them. This Report was presented to the public at open houses with both Tribute and Stantec representatives present with large drawings, photographs of mitigation methods, descriptive wording, and live presentation sessions with questions and answer sessions.

“In the opinion of Stantec, the recommended program of mitigation, monitoring and contingency measures addresses to the extent possible any concerns raised during the public consultation process, as well as any potential effects from pipeline construction and operation.” (Binder 4, Tab E 1, Section 10.0)

It is submitted that the Stantec Report should be accepted by the Board as it was not objected to nor challenged in any way by the parties to the proceeding. Parts of that Report may form a portion of the conditions of approval to a positive decision in these applications.

4.3 Are there any outstanding landowner matters for the proposed pipelines and ancillary facilities routing and construction?

Tribute submits that other than selection of a final site for a compressor station, which will be negotiated and settled prior to any construction, and the McKinley Farms litigation respecting storage rights in the Petroleum and Natural Gas Lease (and compensation), all landowner matters, to Tribute's knowledge, for the proposed pipelines and ancillary facilities routing and construction are settled, subject to any new issues which may arise.

4.4 Are the pipelines and ancillary facilities designed in accordance with the current technical and safety requirements?

Tribute submits that the Board may take comfort through the body of all the evidence that all the pipeline and ancillary facilities, which form a part of this evidentiary record, are completely designed in accordance with the current technical and safety requirements. To the extent that the Board is amenable to granting the longer interim period between approval and construction, which is important to the Applicant's economic success in this project, the Applicant is committed to keeping current with all updated and amended technical and safety requirements, and will adhere to them during the final planning stages and construction phases.

4.5 Will there be any issues with the proposed Industrial Wind Turbine Projects and the associated infrastructure in this area on Tribute's Gas Storage Project (i.e. storage lands and facilities, including equipment, pipelines, wellheads, compressor station etc.)?

Tribute submits that there will be few, if any, issues with the proposed Industrial Wind Turbine ("IWT") projects which are nearby, none of which are not easily capable of resolution. The only project in the immediate vicinity of the Bayfield

and Stanley pools is the Bluewater project, one owned by Next Era Energy (“NEE”) which has no proposed turbines within the pool boundary in either of the Bayfield or Stanley proposed Designated Storage Areas (“DSA”s).

To gather the above understanding, and in response to the concerns raised by the Huron County Federation of Agriculture (“HCFA”) as well as the Municipality of Bluewater, Tribute representatives and consultants met with NEE specifically about locations and facilities for each of the IWT and storage projects. Tribute provided NEE with detailed drawings of the proposed well locations for each of the Bayfield and Stanley pools as well as the proposed pipeline route files. NEE provided Tribute with detailed layout and gathering facility maps of both the Bluewater project, which as stated above is in the vicinity of the Bayfield and Stanley pools and the Goshen project, which is to the South where the proposed pipeline route will cross through.

After reviewing each others’ documentation and meeting with NEE, it appears as though there will be approximately two electrical gathering line crossings from the two IWTs over the gathering pipeline into the Stanley well, but the proposed gas line will either be directionally drilled well below the electrical gathering lines, or will be hand dug and installed below the electrical line, whichever of the two installation methods is selected. There are not anticipated to be any issues with the Goshen project and the transmission pipeline route as the pipeline will likely be in a separate section of the road allowance, based on both NEE and Tribute’s discussions with the municipalities.

Tribute and NEE have agreed to continue to work closely together to ensure that the planning of access roads minimizes any inconvenience to the ongoing permanent farming operations. All buried utilities will be well marked and will pose no risk to ongoing farm operations. None of the affected farms on which facilities are proposed has registered a concern to either NEE or Tribute. It is submitted that there is no apparent concern which cannot be mitigated between NEE and Tribute, taking into account all of the input of the affected landowner(s).

Tribute has carefully reviewed the report filed in evidence by William K.G. Palmer

on behalf of the HCFA (HCFA Questions in Response to Interrogatories dated July 18, 2012, after Schedule D) and respectfully disagrees with some of the positions taken or theories advanced by Mr. Palmer, on the basis that they have admittedly not been verified or proven scientifically. The Applicant respectfully views these positions and theories as preferably excluded from the Board's consideration in this case unless they are substantiated, and it is therefore submitted that they should accordingly be given the weight they attract.

4.6 The Municipality of Bluewater owns and operates a sewage treatment facility (the "Bayfield STF") in the immediate vicinity of the Bayfield Pool. Can, and if so, how can the Applicant ensure that there is no impact of these Applications (and in particular the Development of the Bayfield Pool (EB-2011-0077) and the Construction of a Natural Gas Pipeline (EB-2011-0078) on the existing and future operations of the Bayfield STF, including but not limited to:

- a. The efficient functioning of the existing or future Bayfield STF,*
- b. Access to the existing or future Bayfield STF, and*
- c. The safe inflow and outflow of sewage to and from the existing or future Bayfield STF?*

4.7 Can the Applicant, and if so, how will the Applicant ensure that any use of the Municipality of Bluewater's lands in the vicinity of the Bayfield STF is appropriate and that the Applications (and in particular the Development of the Bayfield Pool (EB-2011-0077) and the Construction of a Natural Gas Pipeline (EB-2011-0078) will have no impact on the Municipality of Bluewater's existing and possible future use of such lands, and in particular as they relate to the existing or future Bayfield STF.

Tribute's Argument-in-Chief submissions in respect of Issues 4.6 and 4.7 are combined below due to the importance of accuracy and their integration:

Tribute intends to work cooperatively with the Municipality of Bluewater in all respects of this file irrespective of the legal rights adumbrated below.

Tribute respectfully submits that it is important that the OEB fully and accurately grasp the nature of the rights pertaining to the lands on which the Bluewater STF is located (“STF Lands”).

In this part of the Argument, Tribute will emphasize the origins of the land and surface rights that it has and will explain how its original rights are paramount and unassailable to those of Bluewater, pursuant to (a) the Gas Storage Lease Agreement dated March 27, 1979, (b) the Petroleum and Natural Gas Lease and Grant dated March 22, 1996 and (c) the Unit Operation Agreement dated March 22, 1996 (altogether referred to as the “Agreements”) (Refer to: “Interrogatories of Tribute’s Pre-Filed Evidence of the Corporation of the Municipality of Bluewater (“Bluewater”)” filed by Tribute on August 8, 2012.)

In Item #1, Tribute describes the three leases mentioned above, which, in Tribute’s legal counsel’s opinion, grant unto Tribute exclusive surface and subsurface rights to the STF Lands by the very nature and original intent of these documents. In Bluewater’s response to the above-mentioned Interrogatories, Bluewater’s principal argument as to why Tribute does not have surface rights to the STF Lands and needs a surface lease is based on the reservation clause that was drafted when the STF Lands were sold by the Porters to Bluewater in 1999, after these Agreements were taken, registered and in full legal force.

Tribute respectfully disagrees with the position of Bluewater and asserts that the correct position is that the land rights reservation was created when the Porters sold the property to Bluewater’s predecessor, the Corporation of the Village of Bayfield, and does not involve or impair Tribute’s rights to the STF Lands, but is rather an arrangement between the purchaser and the seller, as the subsurface and surface rights to the STF Lands are identified in the Agreements.

Furthermore, in Bluewater’s “Answers to Interrogatories” filed on August 22, 2012, Bluewater does not comment on or dispute the fact that Tribute has clear, prior

rights to the STF Lands as determined and laid out in the above three Agreements. It is Tribute's position that these Agreements are paramount, unassailable and pre-suppose the reservation of mineral rights, to which Tribute was not a party.

Notwithstanding the above defined, prior rights, Tribute submits that in general industry practice, the purpose of taking a (new) surface lease is to determine where operations are intended to occur and to avoid the cost and inconvenience of having to meet with landowners every year to measure and determine crop damages in order to determine payment. The surface rights to the property are conveyed in the Agreements and as a convenience, surface leases are negotiated to ease the process of damage compensation for both the landowners and the lessees.

Fortunately, irrespective of the above facts and arguments regarding Tribute's rights to the property in question, Tribute's proposed storage project does not appear to interfere in any way with either the current STF facilities (on which Bluewater failed to consult prior to its construction with Tribute, which it was obliged to do) or the proposed STF expansion, as further discussed below.

Tribute representatives met with Bluewater representatives (Messrs. Stephen McAuley and Ken Strong) on August 1, 2012. In this meeting, amongst other things, Tribute and Bluewater discussed Bluewater's concerns regarding Tribute's possible interference with the current STF facilities as well as their proposed expansion of these facilities. During this meeting, Tribute and Bluewater consulted several drawings and maps of the property while discussing the current and proposed expansion area of the Bluewater STF.

With respect to the concerns regarding the existing STF, the Bayfield pool facilities will be closer to Mill Road and well away from this existing facility. The Metering Station facilities will be next to the access road close to Mill Road, with pipelines from there to the Injection wells. The Metering Station will be located off the access road to the Bayfield STF facilities and will not obstruct access. All Injection wells and Observation wells will be in the farmer's field and away from the access road. All

utility lines will be located as part of the pipeline installation for the pool. During this locate process, all Bayfield STF sewage lines will be located and avoided during construction.

With respect to the proposed expansion area, Tribute was able to confirm to Bluewater that there were no anticipated issues with respect to the development of the Bayfield pool as the STF expansion was to the North and not in the area of the pool. Tribute offered to provide Bluewater with a form of covenant or undertaking to give further assurances as to this fact.

In terms of access to the STF and the safe inflow and outflow of sewage, Tribute and Bluewater examined the map of the facilities and Bluewater was able to point out which areas would cause problems to the facilities if disturbed and may disrupt access, inflow and outflow. Tribute was able to examine these maps and drawings and, in a letter to Mr. Ken Strong dated August 8, 2011, represented and confirmed that Tribute did not intend to, and would not, disturb these sensitive areas, where the disturbance of which would cause problems to the current and proposed facilities.

4.8 How and when will the Applicant satisfactorily address the several issues raised in the Municipality of Bluewater's correspondence dated 9th of October 2009 (Binder 4, D4-4)? These issues include, but are not limited to the following :

- a. Conflicts of the pipeline with power lines and other utilities;*
- b. Compensation and/or restoration for any tree removal;*
- c. Public and private roadway use issues;*
- d. The location of the pipeline in relation to the cemetery located on Bronson Line north of Rogerville Road;*
- e. Whether additional archaeology work is required;*

- f. The depth of the pipeline may need to be adjusted at the crest of hills, areas of future municipal reconstruction, and at stream/drain crossings;*
- g. Pipeline details to include but not be limited to plan and profile drawings of sufficient grades/elevations for all surface and subsurface features, minimum cover, road crossings and culvert crossings details, pipeline depths for the entire route, pipeline materials, construction methods and boring methods, archaeology results;*
- h. Construction methods;*
- i. Receipt of consents and approvals;*
- j. That the Applicant obtain approval from the Municipality of Bluewater for its works;*
- k. That the Applicant enter into an agreement with the Municipality of Bluewater for the maintenance and upkeep for those sections of the pipeline located on the Municipality's property which shall address responsibility for all work related to the project, future relocation costs, liability, insurances, as-built drawings, restoration, duration and removal.*

When the pre-construction detailed design and engineering period commences, Tribute will ensure that Tribute's pipeline engineers and Bluewater representatives will work very closely together to discuss the pipeline route and construction methodologies on a metre by metre scale for the entire 27 km pipeline route in Bluewater's territory. Tribute and their representatives and consultants will ensure that Bluewater is completely satisfied with all of the above-noted issues to obtain final approval for the commencement of construction by Bluewater.

Summary

Tribute respectfully submits that the Board should approve these applications as they are worthy of OEB approval from two distinct perspectives. First, it is in the public interest that exploration for and development of underground gas storage pools continues in Ontario within the relatively new competitive storage regulatory

regime established by the Board, where the evidence justifies these developments – even if they take longer than previously expected in terms of the timing of the developments. Second, it is fair to the long-term investors backing these developments, who are not relying on ratepayer funding, to approve these types of complex, expensive and time-consuming projects, when they meet the types of threshold tests established by the Board in its approved Issues List.

It is submitted that Tribute has met the expectations set out in the OEB's Issues List and satisfied the onus on an applicant to prove that the storage designations as requested, and the associated orders, are in the public interest. Tribute therefore believes these applications should be approved, as requested, with recognition of the evolving domestic and regional market conditions. These conditions necessarily affect the coordinated timing of the regulatory approvals sought, with permitting the development to be constructed in a prudent commercial manner at a time, when the economics align with the in-hand approvals.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

By Tribute Resources Inc. and Bayfield Resources Inc.

A handwritten signature in black ink, appearing to read 'J. Lowrie' or 'Jane Lowrie', written in a cursive style.

Jane E. Lowrie, President