



EB-2010-0150

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S. O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application for an Order
granting leave to construct a new transmission line and
facilities for Northgate Minerals Corporation.

BEFORE: Ken Quesnelle
Presiding Member

Paula Conboy
Member

DECISION WITH REASONS AND ORDER

APPLICATION AND PROCEEDING

Northgate Minerals Corporation (the “Applicant” or “Northgate”) has filed an application with the Ontario Energy Board, (the “Board”) dated March 5, 2010 under section 92(1) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (the “Act”). The Applicant has applied for an order of the Board granting leave to construct approximately 7 kilometres of 115 kV electricity transmission line, and a substation at its Young-Davidson Mine site, near the Town of Matachewan (the “Project”). The Applicant has also applied pursuant to section 97 of the Act for approval of a form of easement agreement. The Application has been assigned Board File No. EB-2010-0150.

The proposed Project would connect to an existing 47 kilometre 115 kV decommissioned transmission line¹ owned by Hydro One Networks Inc. ("Hydro One") that is being replaced to accommodate the 17 MW load requirement of the Young-Davidson Mine (the "Hydro One Work").

Following issuance of the Notice of Application and Hearing on March 30, 2010, Northgate published and completed its service of the Notice on April 22, 2010.

The Board approved four intervenors for the proceeding: the Independent Electricity System Operator ("IESO"), and 3 landowners; Oleg Anisimov, Marina Anisimov, and Natalia Rezva. In approving the combined intervention request of the 3 landowners, the Board clarified that generally speaking, the Board does not have jurisdiction to explore issues related to environmental matters. The Township of James filed a letter of support for the proposed transmission line with the Board on April 20, 2010. The Board conferred observer status to the Township of James in order to allow it to directly receive any Board issued documents regarding this Application.

Responses by the Applicant to Board staff interrogatories were filed on May 31, 2010. Submissions by Board staff were filed on June 4, 2010, and reply by Northgate was filed on June 11, 2010. None of the intervenors filed interrogatories or final submissions.

CONFIDENTIALITY REQUEST

In a letter dated June 11, 2010, the Applicant responded to Board staff submission by providing additional information regarding the economic analysis performed by Hydro One relating to both the Project and the related work being performed on the Hydro One Work. The Applicant requested that the additional economic information should be kept confidential as it relates to financial information of Northgate, a private sector company operating in a competitive environment². Northgate also indicated that the tendering process of the construction of the Project has not yet been completed and disclosure of estimated costs might reduce the competitiveness of the tender. Northgate cited the Board's *Rules of Practice and Procedure* and the *Practice Direction on Confidential Filings* as part of its request.

¹ Submission of Northgate Minerals Corporation, June 11, 2010/p.1/paragraph 1

² Letter filed by Applicant on June 11, 2010, page 1, paragraph 2

The Board is granting the Applicant's request to keep the additional economic information referred to in the Applicant's June 11, 2010 letter confidential.

BOARD FINDINGS

Section 96(2) of the Act provides that for an application under section 92 of the Act, when determining if a proposed work is in the public interest, the Board shall only consider the interests of consumers with respect to prices and reliability and quality of electricity service, and where applicable in a manner consistent with the policies of the Government of Ontario with regard to the promotion of the use of renewable energy sources.

In the context of this Application, the main issues for the Board to consider are as follows:

1. Is the proposed project needed and is its routing the best alternative?
2. Is there a System Impact Assessment and what are its conclusions?
3. Is there a Customer Impact Assessment and what are its conclusions?
4. Have the land-use matters been addressed?
5. Will there be an impact on transmission rates?
6. If the project is approved, what should be the conditions of approval?

Project Need and Routing

Northgate's redevelopment of the Young-Davidson Mine will increase the Mine's load from 3 MW to approximately 17.3 MW. In its evidence, Northgate indicated that the Mine is currently served by a 44 kV system that does not have enough capacity to supply the increased load requirements of the Mine. The Applicant also indicated that in addition to the approximately 7 kilometres it proposes to construct, Hydro One will replace approximately 47 km of decommissioned 115kV transmission line to connect to the Mine site substation. Northgate indicated that Hydro One has confirmed³ that the Hydro One Work does not require leave to construct as it comes within exemption provided by section 92(2) of the Act.

³ Northgate response to Board staff Interrogatory 3, dated May 31, 2010 indicating that the refurbishment is performed in accordance with section 92(2) of the Act

The Board notes that Northgate's evidence⁴ in regard to the proposed route for the approximately 7 km of transmission line has been further augmented by a detailed description of the alternative routes considered but rejected as contained in its response to a Board staff interrogatory⁵.

The Board is satisfied that the need for the Project to serve the Mine is established, and that the Applicant has adequately demonstrated that the proposed routing represents the best of the alternatives examined.

System Impact Assessment

The Board's filing requirements for transmission applications specify that the Applicant is required to file a System Impact Assessment ("SIA") performed by the IESO. The Applicant filed in its pre-filed evidence the final SIA report, completed by IESO⁶, which concludes that the project will not have any negative or adverse system impacts, provided certain conditions and recommendations are implemented.

The Board's decision to grant this application is conditional on Northgate fulfilling the conditions and recommendations required in the SIA report.

Customer Impact Assessment

The Board's filing requirements for transmission applications also specify that the Applicant is required to file a Customer Impact Assessment ("CIA") performed by the relevant licensed transmitter, in this case Hydro One. The purpose of the CIA is to indicate if there are any negative effects to customers in the affected area as a result of the connection of the project. The CIA report completed by Hydro One, dated March 16, 2010, was filed in response to a Board staff interrogatory⁷.

The CIA report indicated that incorporation of the Project into the IESO controlled grid will not negatively impact other customers or reduce the existing reliability of the

⁴ Exhibit B/Tab3/Schedule1

⁵ Northgate response to Board staff Interrogatory 2, dated May 31, 2010, showing that Alignment C to be the preferred alternative.

⁶ Exhibit B/Tab 6/Schedule 2, September 30, 2009

⁷ Northgate response to Board staff Interrogatory 6, May 31, 2010

refurbished 115 kV transmission line⁸. The CIA recommended that Northgate adopt certain operating procedures⁹ to minimize any voltage variations on the line.

The Board's decision to grant this application is conditional on fulfilling the requirements and recommendations contained in the CIA report.

Land Rights and Form of Easement Agreement

Section 97 of the Act requires that the Board be satisfied that the Application has offered or will offer to each owner of land affected by the proposed route or location and agreement in a form approved by the Board. Northgate filed a draft Agreement to Grant an Easement (the "Draft Easement Agreement")¹⁰.

The Board notes that there were three landowner requests for intervenor status, whose properties were located approximately 130 meters from the proposed transmission line¹¹.

As required by section 97 of the Act, Northgate filed a draft Agreement to Grant an Easement (the "Draft Easement Agreement")¹². The Board notes that there were no requests to vary the Draft Easement Agreement. The Board also notes Northgate's commitment to making the required offer to each affected landowner. The Board finds the Draft Easement Agreement acceptable, and expects that Northgate will offer any affected landowner the noted agreement as stated in its submission¹³.

The Board finds that land issues have been satisfactorily dealt with.

⁸ Customer Impact Assessment report completed by Hydro One, March 16, 2010, page 21, section 2.5

⁹ Customer Impact Assessment report completed by Hydro One, March 16, 2010, page 21, section 3.0

¹⁰ Exhibit B/Tab 6/Schedule 4

¹¹ Letter of Intervention, dated April 8, 2010 filed with the Board by Oleg Anisimov requesting intervenor status for himself, Marina Anisimov, and Natalia Rezva.

¹² Exhibit B/Tab 6/Schedule 4

¹³ Submission of Northgate Minerals Corporation, June 11, 2010/page 4/paragraph 24

Project Costs and Transmission Rate Impacts

Northgate's pre-filed evidence¹⁴ indicated that it intends to finance and construct the transmission line, and upon completion transfer the line to Hydro One pursuant to the Transmission System Code (the "TSC").

The Applicant, with input from Hydro One in response to a Board staff interrogatory¹⁵, indicated that an economic evaluation was performed by Hydro One for the reconstruction of the decommissioned Hydro One line (47 km idled section). Hydro One indicated to Northgate that the cost responsibility treatment for this project should be similar to that of a new load, given that Hydro One has postponed removal since 2008 of the idled section from service in anticipation of the possibility of the new Northgate connection.

The Applicant submitted¹⁶ that it is contributing the vast majority of the capital cost of the Project, assuming transfer of ownership to Hydro One¹⁷, and the decommissioned Hydro One line through a capital contribution to Hydro One as set out in the TSC. This indicates that neither the Project nor the Hydro One Work will have any significant impact on the Hydro One transmission system Network Pool revenue requirement or the Line Connection Pool revenue requirement.

The Board finds that the impacts of the Project and the Hydro One Work on transmission rates are practically negligible whether or not Northgate opts to transfer its Project to Hydro One upon completion.

The Board notes that both the Applicant and Hydro One indicated that they are working through the financial and economic issues and are committed to complying with the requirements of the TSC¹⁸.

¹⁴ Exhibit A/Tab 2/Schedule 1/page 2/paragraph 8

¹⁵ Northgate and Hydro One's response to Board staff Interrogatory 3, (i) (d), dated May 31, 2010

¹⁶ Submission of Northgate Minerals Corporation, June 11, 2010/page 3/paragraph 14

¹⁷ Exhibit A/Tab 2/Schedule 1/page 2/paragraph 8

¹⁸ Submission of Northgate Minerals Corporation, June 11, 2010/page 3/paragraph 12

Environmental Assessment

The Board notes that Northgate has completed the environmental assessment process required by the *Environmental Assessment Act*, R.S.O. 1990, c. E- 18.

Aboriginal Issues

On June 29, 2010, the Board received a letter from the Temagami First Nation/ Teme-Augama Anishnabi ("Temagami") in relation to this proceeding. This was after both the evidentiary and argument phase of the proceeding had closed. The letter indicated that Temagami had learned of the Application only on June 28 and that the Board had not fulfilled its obligations to consult with Temagami regarding the impacts of the Application on their interests. Temagami indicated that it intended to file a complete submission within 30 days, and asked the Board to refrain from issuing a decision on the application until after that time.

On July 6, Northgate filed a lengthy response, in which it disagreed with the assertion that Temagami was not aware of the Application, and the assertion that there had been a failure to discharge the duty to consult. By letter dated July 8, the Board gave Temagami until July 16 to respond to Northgate's response.

On July 21, Temagami filed its response with the Board. Temagami disputed the assertions made in Northgate's July 6 letter, and re-iterated its view that consultation for the Project had not been completed.

On July 29, the Board issued Procedural Order No. 2. Procedural Order No. 2 noted that the Application relates only to the transmission line, and that the Board has no jurisdiction over the Mine itself. Any issues relating to the Mine, therefore, are outside the scope of the proceeding.

The Board also asked parties to consider a previous decision the Board had made with regard to its jurisdiction to consider the duty to consult with Aboriginal peoples in an electricity leave to construct application¹⁹. In that decision ("Yellow Falls"), the Board held that section 96(2) of the Act restricted the scope of its review in an electricity leave to construct application to a consideration of issues relating to price, the reliability and quality of electricity service, or the promotion of the government's renewable energy

¹⁹ Decision on jurisdictional issues, EB-2009-0120.

policies. The Board was therefore not empowered to consider any other issues, such as issues relating to Aboriginal consultation. The Board indicated that it was reluctant to delay the proceeding any further without having confidence that it indeed has the jurisdiction to consider the materials or arguments that Temagami proposed to file. The Board therefore gave Temagami until August 6, 2010 to indicate what Aboriginal consultation issues were in play, how they related to the proposed transmission line, and how they fell within the Board's jurisdiction. Although the deadline has passed, Temagami has not filed any response to these questions.

The Board will not delay this proceeding any further on account of the concerns raised by Temagami. The Notice for this Application was served directly on Temagami on April 9, 2010. Notice was also published in the Northern News and the Timmins Daily Press on April 9, 2010. The French translation of the Notice was published in the Kirkland Lake Northern News on April 9, 2010, and "Les Nouvelles" (Timmins) on April 14, 2010. Temagami did not contact the Board with any concerns until June 29, 2010 – two and half months later.

Despite the lateness of its request to participate, the Board allowed Temagami until July 16, 2010 to respond to Northgate's letter challenging Temagami's participation, and then until August 6, 2010 to indicate what Aboriginal consultation issues were at play in the proceeding, how these issues relate to the electricity transmission line itself, and how the issues fall within the Board's jurisdiction. Although Temagami did file a response to Northgate's letter on July 21 2010, it did not respond to the Board's subsequent questions from Procedural Order No. 2.

The Board has a responsibility to all parties, including the Applicant, to ensure that its proceedings move expeditiously. The Board has already imposed significant delays on this proceeding to allow Temagami to explain its concerns and how they might fit within the scope of the Board's jurisdiction. With Temagami's failure to respond to the questions in Procedural Order No. 2, the Board is not willing to grant any further delays.

The Board further observes that it is not clear that the Temagami's concerns relate to the Project itself. Temagami's initial letter to the Board dated June 29, 2010 does not identify specific concerns with the Project, though it does indicate that environmental and technical matters might be relevant. The letter of July 21, 2010 similarly does not identify any specific concerns with the Project. The letters also do not identify what Aboriginal or treaty rights may be infringed by the Project.

The Board's jurisdiction in electricity leave to construct applications is limited by section 96(2) of the Act. Temagami highlights potential environmental issues, but these are outside the Board's jurisdiction. Indeed, except as they relate to the criteria listed in section 96(2), the Board has found in a previous case that Aboriginal consultation issues are not within its jurisdiction at all in electricity leave to construct applications.

The Board will therefore not delay this proceeding any further.

Conclusion

Having considered all of the evidence related to the Application, the Board finds Northgate's proposed transmission line Project to be in the public interest in accordance with the criteria established in section 96(2) of the Act.

THE BOARD ORDERS THAT:

1. Pursuant to section 92 of Act, Northgate Minerals Corporation is granted leave to construct a 7 kilometre 115 kV electricity transmission line, and a substation at its Young-Davidson Mine site, near the Town of Matachewan, subject to the Conditions of Approval attached as Appendix A to this Order.
2. Northgate Minerals Corporation shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

ISSUED at Toronto on August 19, 2010

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX A

**Conditions of Approval for
Northgate Minerals Corporation
Transmission Line and Associated Transmission Facilities (the "Project")
EB-2010-0150**

DATED: August 19, 2010

**Conditions of Approval for
Northgate Minerals Corporation
Transmission Line and Associated Transmission Facilities (the "Project")
EB-2010-0150**

1 0 General Requirements

- 1.1 Northgate Minerals Corporation ("Northgate") shall construct the Project and restore the Project land in accordance with its Leave to Construct application, evidence and undertakings, except as modified by this Order and these Conditions of Approval.
- 1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate July 15, 2011, unless construction of the Project has commenced prior to that date.
- 1.3 Northgate shall implement all the recommendations of the Environmental Screening Reports.
- 1.4 Northgate shall satisfy the Independent Electricity System Operator ("IESO") requirements and recommendations as reflected in the Final System Impact Assessment report dated September 30, 2009.
- 1.5 Northgate shall satisfy the Hydro One Networks Inc. ("HONI") requirements as reflected in the Customer Impact Assessment report dated March 16, 2010.
- 1.6 Northgate shall advise the Board's designated representative of any proposed material change in the Project, including but not limited to material changes in the proposed route, construction techniques, construction schedule, restoration procedures, or any other material impacts of construction. Northgate shall not make a material change without prior approval of the Board or its designated representative. In the event of an emergency the Board shall be informed immediately after the fact.
- 1.7 Northgate shall obtain all necessary approvals, permits, licences, certificates and easement rights required to construct, operate and maintain the Project, and shall provide copies of all such written approvals, permits, licences and certificates upon the Board's request.

2.0 Project and Communications Requirements

- 2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Electricity Facilities & Infrastructure.
- 2.2 Northgate shall designate a person as Project engineer and shall provide the name of the individual to the Board's designated representative. The Project

engineer will be responsible for the fulfillment of the Conditions of Approval on the construction site. Northgate shall provide a copy of the Order and Conditions of Approval to the Project engineer, within ten (10) days of the Board's Order being issued.

- 2.3 Northgate shall develop, as soon as possible and prior to the start of construction, a detailed construction plan. The detailed construction plan shall cover all material construction activities. Northgate shall submit five (5) copies of the construction plan to the Board's designated representative at least ten (10) days prior to the commencement of construction. Northgate shall give the Board's designated representative ten (10) days written notice in advance of the commencement of construction.
- 2.4 Northgate shall furnish the Board's designated representative with all reasonable assistance needed to ascertain whether the work is being or has been performed in accordance with the Board's Order.
- 2.5 Northgate shall, in conjunction with HONI and the IESO, develop an outage plan which shall detail how proposed outages will be managed. Northgate shall provide five (5) copies of the outage plan to the Board's designated representative at least ten (10) days prior to the first outage. Northgate shall give the Board's designated representative ten (10) days written notice in advance of the commencement of outages.
- 2.6 Northgate shall furnish the Board's designated representative with five (5) copies of written confirmation of the completion of Project construction. This written confirmation shall be provided within one month of the completion of construction.

3.0 Monitoring and Reporting Requirements

- 3.1 Both during and for a period of twelve (12) months after the completion of construction of the Project, Northgate shall monitor the impacts of construction, and shall file five (5) copies of a monitoring report with the Board within fifteen (15) months of the completion of construction of the Project. Northgate shall attach to the monitoring report a log of all comments and complaints related to construction of the Project that have been received. The log shall record the person making the comment or complaint, the time the comment or complaint was received, the substance of each comment or complaint, the actions taken in response to each if any, and the reasons underlying such actions.
- 3.2 The monitoring report shall confirm Northgate's adherence to Condition 1.1 and shall include a description of the impacts noted during construction of the Project and the actions taken or to be taken to prevent or mitigate the long-term effects of the impacts of construction of the Project. This report shall describe any outstanding concerns identified during construction of the Project and the

condition of the rehabilitated Project land and the effectiveness of the mitigation measures undertaken. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Any deficiency in compliance with any of the Conditions of Approval shall be explained.

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