



EB-2011-0106

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

AND IN THE MATTER OF an application by Goldcorp
Canada Ltd. and Goldcorp Inc. for leave to construct
new 115kV transmission facilities in the Municipality
of Red Lake, and other orders.

BEFORE: Ken Quesnelle
Presiding Member

Cynthia Chaplin
Member and Vice-Chair

Marika Hare
Member

**DECISION ON *EX PARTE*, INTERIM AND INTERLOCUTORY MOTION UNDER
SECTION 19 OF THE OEB ACT**

BACKGROUND

Goldcorp Canada Ltd. and Goldcorp Inc. acting jointly as Goldcorp ("Goldcorp" or the "Applicant") filed an application, dated April 25, 2011, with the Ontario Energy Board under sections 92 and 19 of the *Ontario Energy Board Act*, S.O. 1998, c.15, Schedule B (the "Act"). Goldcorp is seeking an order of the Board granting leave to construct 10.7 km of 115 kV single circuit transmission line from Hydro One Networks Inc.'s ("HONI")

115 kV E2R Transmission line at a point approximately 2 km south of Harry's Corner to the to-be-constructed Balmer Complex Transformer Station ("TS"), all in the Municipality of Red Lake. Goldcorp filed a Notice of Motion of the same date seeking an *ex parte*, interim and interlocutory order under section 19 of the Act, granting leave to carry out civil engineering work at the proposed Balmer Complex TS site and to clear and grub the right-of-way prior to the Board rendering its decision on the leave to construct application and without prejudice to the Board's determination of that application.

Goldcorp Canada Ltd. is a federal company headquartered in Toronto, and carries on the business of, among other things, operating gold mines in Ontario.

This Decision deals solely with the section 19 Motion and with the threshold issue of the *ex parte* nature of the motion. For this reason, the Board has determined that no further submissions are required on the Motion.

THE MOTION

The relevant portions of section 19 of the Act read as follows:

19(1) The Board has in all matters within its jurisdiction authority to hear and determine all questions of law and of fact.

(2) The Board shall make any determination in a proceeding by order.

(6) The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by this or any other Act.

The evidence filed by the Applicant indicates that the Motion filed pursuant to section 19 of the Act is to authorize Goldcorp and its contractors to carry out:

- civil engineering work including grading, fencing, installing foundation for and constructing walls of the Balmer Complex TS building for the Balmer Complex TS. The Applicant proposed to commence with work on May 1 and continue this work until the Board makes its determination with respect to whether to grant leave to construct under section 92 of the Act.
- Clearing and grubbing the right-of-way for the applied for transmission line starting May 1, 2011 and lasting until the commencement of the nesting season

for breeding and migrating birds in May, and then again in mid July on the portions of the right-of-way outside the buffer zone for two separate bald eagle nests on the proposed right-of-way, and finally, in September, 2011 after the bald eagle nesting period is complete.

The grounds cited for the Motion are provided at Exhibit A, Tab 4, Schedule 1, pages 3-6 of the Applicants evidence.

In essence Goldcorp indicates that it needs to have its proposed facilities in service by Q4 2011 in order to meet the requirements of its Mine Development Plan and the construction schedule dictates that construction should start sometime in June, 2011 and proceed continuously until November, 2011. The Applicant indicates that because the Board's normal procedure and timing for a leave-to-construct application could result in a decision on the leave to construct as late as the first of September, 2011 this would not allow the applicant to complete construction until February of 2012.

Goldcorp's evidence indicates that it is further constrained by seasonal restrictions imposed by the Ministry of Natural Resources ("MNR") which relate to bird nesting periods. The evidence indicates that there are no breeding bird nesting areas on or around the site and the Balmer Complex where the Applicant plans to locate the Balmer Complex TS, and that there are therefore no MNR restrictions on construction in that area. However, due to MNR rules, clearing and grubbing on the right-of-way may not be carried out within 1 km of two Bald Eagle nests found on the right-of-way until September 1, 2011. Clearing and grubbing may be carried out on the rest of the right-of-way until mid May and after mid July.

Goldcorp indicates that it is unaware of any opposition to its project or proposed facilities and that it expects all required permits from MNR by around April 26, 2011.

Goldcorp further indicates that it is prepared to accept the financial and regulatory risk of spending the money necessary to carry out these pre-construction activities before the Board has made a decision on its section 92 application.

BOARD FINDINGS

The Board has reviewed the evidence provided by the Applicant and considered the evidence relevant to the section 19 motion.

The Board has determined that it will not grant an *ex parte*, interim and interlocutory order granting the Applicant leave to carry out civil engineering work at the proposed Balmer Complex TS site and to clear and grub the right-of-way.

In making its determination, the Board has considered the requirements of section 21(4)(s) of the Act, which reads as follows:

Despite section 4.1 of the *Statutory Powers Procedure Act*, the Board may, in addition to its power under that section, dispose of a proceeding without a hearing if,

...

- (b) ***the Board determines that no person, other than the applicant, appellant or licence holder will be adversely affected in a material way by the outcome of the proceeding*** and the applicant, appellant or licence holder has consented to disposing of a proceeding without a hearing. [Emphasis added]

In essence, the Applicant has asked that the Board dispose of its motion, which is in substance, a proceeding in which the Applicant seeks leave to have access to, enter upon, and complete certain works, some of which are of a permanent nature, on certain lands on an *ex parte* basis, that is without providing notice to parties that may be adversely affected in a material way by the outcome of the proceeding. Subsection 21(4)(b) is therefore operative in this case.

The Applicant has provided evidence to indicate that it has identified and notified stakeholders who may have an interest in the proposed transmission facilities and that it has conducted a public consultation process. Goldcorp also provided a list of stakeholders, including First Nations, that may have an interest in the proposed transmission facilities as well as a description of the consultation program and a list of correspondence.

The Board cannot determine whether and to what extent any person, other than the applicant in this case, will be adversely affected by the outcome of this proceeding, without having provided notice in the Board's standard form of Notice and communicated in the Board's required methods. Therefore, the Board cannot at this time grant relief of the type sought by the Applicant. The Board notes that it is issuing

the Notice of Application and Letter of Direction simultaneously with this Decision. The Board intends to take all reasonable steps to expedite the proceeding where possible and appropriate. In that context, the Applicant may consider seeking some form of relief in advance of the Board's final disposition of the application.

THE BOARD THEREFORE ORDERS THAT the Motion filed by the Applicant pursuant to section 19 for an *ex parte* interim and interlocutory order authorizing Goldcorp and its contractors to carry out (1) civil engineering work including grading, fencing, installing foundation for and constructing walls of the Balmer Complex TS building for the Balmer Complex TS and (2) clearing and grubbing the right-of-way for the applied for transmission line starting May 1, 2011 and lasting until the commencement of the nesting season for breeding and migrating birds in May, and then again in mid July on the portions of the right-of-way outside the buffer zone for two separate bald eagle nests on the proposed right-of-way, and finally, in September, 2011 after the bald eagle nesting period is complete; is hereby denied.

ISSUED at Toronto, April 29, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary