



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 for an Order granting leave to construct new 115 kV transmission lines and facilities in the Municipality of Red Lake.

PROCEDURAL ORDER NO. 1

Goldcorp Canada Ltd. and Goldcorp Inc. acting jointly as Goldcorp ("Goldcorp" or the "Applicant") have filed an application with the Ontario Energy Board, (the "Board") dated April 25, 2011 under section 92 of the *Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B*. 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, all in the Municipality of Red Lake. The Application has been assigned Board File No. EB-2011-0106.

The proposed transmission facilities include:

- A new switchyard connecting HONI's Tap on its E2R 115 kV transmission line approximately 2 km southwest of Harry's Corner with the proposed 115 kV transmission line;
- A new 10.7 km 115 kV single circuit transmission line running from the switchyard to the to-be-constructed Balmer Complex Transformer Station;
- A 115 kV/44 kV Transformer Station at Goldcorp's Balmer Complex.

The proposed transmission facilities will be owned and constructed by Goldcorp until the system is commissioned. Following which, the switchyard and 115 kV transmission line, but not the Balmer Complex Transformer Station, will be transferred to and operated by HONI. The planned in-service date for this project is December 2011.

The Board issued a Notice of Application and Hearing ("Notice") on April 29, 2011. The Notice was served on all affected and interested parties and was also published in the Northern Sun News and the Wawatay News.

Intervenors and Cost Eligibility

The Board has received requests for intervenor status from Hydro One Networks Inc. ("HONI"), the Independent Electricity System Operator ("IESO"), and Lac Seul First Nation ("LSFN").

HONI and the IESO indicated that they do not intend to seek an award of costs for participating in the proceeding. Further, these parties took no position on the Board's decision to proceed by way of a written hearing in this matter.

The Board received LSFN's request for intervenor status on May 9, 2011. LSFN submitted that the proposed transmission corridor was within its traditional territory and any approval of the proposed facilities would have a significant impact on LSFN's ability to use and occupy its territory, as promised by treaty and s.35 of the *Constitution Act, 1867*. LSFN also noted,

This proposed project is captured by the Crown's duty to consult and accommodate, and any delegation of the procedural aspects of that duty.

LSFN further asserted that:

To-date, neither the Crown nor the applicant (as a delegate of the Crown for this purpose) has discharged this duty to LSFN with respect to this proposed project. This continues to be the case despite the fact that consultation and accommodation must occur at the earliest stage, or at the strategic planning stage, of any proposed project.

LSFN requested that the Board proceed by way of oral hearing for this matter.

In a response dated May 11, 2011, Goldcorp did not object to LSFN's request for intervenor status, but disagreed with LSFN's assertion that Goldcorp had not consulted LSFN in relation to the proposed transmission facilities and LSFN's request for an oral hearing. Goldcorp provided copies of various letters and e-mails to demonstrate that it had contacted LSFN as part of the environmental assessment for the proposed transmission facilities.

Following Goldcorp's response and in a letter dated May 13, 2011, LSFN withdrew its request for an oral hearing.

The Board will grant LSFN intervenor status and eligibility to apply for an award of costs. LSFN's cost eligibility shall be restricted to matters directly within the scope of this proceeding. In that regard, the Board reminds LSFN that in recent leave to construct cases the Board has consistently held that it has little authority to consider issues relating to Aboriginal consultation in the context of s. 92 applications. The Board also notes that in a preliminary ruling in EB-2009-0120 ("Yellow Falls")¹, the Board found that its jurisdiction to consider issues in a s.92 leave to construct case are strictly limited to matters of price, reliability and quality of electricity service and the promotion of the government's renewable generation policies, as provided in s.96(2):

In an application under section 92, the Board shall only consider the following when, under subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line or electricity distribution line, or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.
2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources.

In the Yellow Falls decision, the Board also found that the environmental assessment process was an appropriate forum for the consideration of Aboriginal consultation issues in relation to environmental matters. The Board also stated:

In accordance with the rules and procedures governing the environmental assessment process the Minister of Environment will make a decision. The Board has no mandate or jurisdiction of any kind to suggest that it is empowered to review, assess, or adjudicate upon the adequacy of the Minister's consultation and accommodation of Aboriginal peoples.²

Further information on what activities are eligible for costs, as well as forms and related materials, can be found in the Board's *Practice Direction on Cost Awards*.

The list of approved intervenors is attached as Appendix A to this Order.

¹ Decision on Questions of Jurisdiction And Procedural Order No. 4, EB-2009-0120

² *Ibid* p. 9

Motion

On May 3, 2011, the Board received a Notice of Motion from Goldcorp seeking an order 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 has requested that this motion be heard orally and some ten days after the publication of the Board's Notice.

The Board has determined that it can proceed most expeditiously in this matter by conducting an oral hearing of the motion.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. The Board will convene an oral hearing to hear the Motion on **June 7, 2011** in the Board's hearing room at 9:30 am, 2300 Yonge Street, Toronto. The Board expects that in addition to any cross-examination on the evidence filed by the Applicant in its Notice of Motion, the parties will be prepared to deliver submissions on the Motion.
2. Board staff and intervenors who wish information and material from Goldcorp in relation to the main application that is in addition to Goldcorp's pre-filed evidence with the Board, and that is relevant to the hearing, shall request it by written interrogatories filed with the Board and delivered to Goldcorp on or before **June 9, 2011**. Where possible, the questions should specifically reference the pre-filed evidence.
3. Goldcorp shall, no later than **June 17, 2011**, file with the Board and deliver to all intervenors a complete response to each of the interrogatories.
4. Intervenors and Board staff shall, on or before **June 20, 2011** indicate if it is their intention to file evidence. If any party indicates an intention to file evidence, the Board may revise the dates for written submissions.
5. Board staff and intervenors shall file their written submission, if any, with the Board, and deliver it to Goldcorp and other intervenors, by **June 28, 2011**.

6. If Goldcorp wishes to respond to a submission, the response must be filed with the Board and delivered to intervenors by **July 8, 2011**.

All filings to the Board must quote the file number, EB-2011-0106, be made through the Board's web portal at www.errr.ontarioenergyboard.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available you may email your document to the address below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary

E-mail: Boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

DATED at Toronto, May 26, 2011
ONTARIO ENERGY BOARD

Original signed by:

Kirsten Walli
Board Secretary

APPENDIX “A”

**Goldcorp Leave to Construct Application
EB-2011-0106**

LIST OF INTERVENORS

**Goldcorp - Red Lake Gold Mines
EB-2011-0106**

APPLICANT & LIST OF INTERVENORS

May 27, 2011

APPLICANT

Rep. and Address for Service

**Goldcorp - Red Lake Gold
Mines**

Ian Blue

Goldcorp - Red Lake Gold Mines
Suite 3100, Scotia Plaza
40 King St. W.
Toronto, ON M5H 3Y2

Tel: 416-865-2962
Fax: 416-865-6636
ibblue@gardiner-roberts.com

**Goldcorp - Red Lake Gold
Mines**

Rep. and Address for Service

Curtis Pedwell

Goldcorp Inc. - Red Lake Mine
Bag 2000
Balmertown ON P0V 1C0
Tel: 807-735-2077 Ext: 5118
Fax: Not Provided
curtis.pedwell@goldcorp.com

APPLICANT COUNSEL

Brian Dominique

Cassels Brock & Blackwell LLP
40 King Street West
Suite 2100
Toronto ON M5H 3Y2
Tel: 416-869-5435
Fax: 416-360-8877
bdominique@casselsbrock.com

INTERVENORS

Rep. and Address for Service

**Goldcorp - Red Lake Gold Mines
EB-2011-0106**

APPLICANT & LIST OF INTERVENORS

- 2 -

May 27, 2011

Hydro One Networks Inc.

Anne-Marie Reilly

Senior Regulatory Coordinator
Hydro One Networks Inc.
483 Bay Street
8th Floor - South Tower
Toronto ON M5G 2P5
Tel: 416-345-6482
Fax: 416-345-5866
regulatory@hydroone.com

**Independent Electricity
System Operator**

Carl Burrell

Senior Analyst, Regulatory Affairs
Independent Electricity System Operator
655 Bay Street, Suite 410
P.O. Box 1
Toronto ON M5G 2K4
Tel: 416-506-2858
Fax: 905-506-2847
carl.burrell@ieso.ca

Lac Seul First Nation (LSFN)

William Major

Keshen & Major
Suite 200-120 Second Street South
Kenora ON P9N 1E9
Tel: 807-469-3073
Fax: 807-468-4893
wjmajor@mac.com