

ONTARIO ENERGY BOARD

File No. 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.

SUBMISSIONS OF LAC SEUL FIRST NATION

OVERVIEW

1. Goldcorp Canada Ltd. and Goldcorp Inc. (“Goldcorp”) has filed an application with the Ontario Energy Board, (the “Board”) seeking an order granting leave to construct 10.7 km of 115 kV single circuit transmission line and associated facilities (the “Proposed Facilities”) in the Municipality of Red Lake, Ontario.
2. The Proposed Facilities lie entirely within the traditional territory of Lac Seul First Nation (“LSFN”).¹ LSFN band members collectively enjoy unique treaty and aboriginal rights throughout their traditional territory. These rights are enshrined in Treaty 3 and are protected under section 35 of the *Constitution Act*, 1982.
3. Section 96(2) of the *Ontario Energy Board Act*² outlines the factors that the Board must consider before granting leave to construct on an application. The primary consideration is whether the project is in the public interest. The public interest quality of a project is weighed from evidence respecting impact on

¹ Affidavit of Chris Angecone, paragraph 2, page 1, Exhibit ‘A’.

² *Ontario Energy Board Act*, S.O. 1998, at section 92, 96(2).

prices, reliability and quality of electricity service, and consistency with government renewable energy policies.³

4. Lac Seul First Nation submits that the Board should not grant leave to construct at this time. The totality of evidence before the Board fails to demonstrate that the Proposed Facilities are in the public interest:

- a. Goldcorp has not received the required approvals, permits and licences to proceed with the project;
- b. The Ministry of Natural Resources (“MNR”) has acknowledged that the duty to consult has not been discharged with respect to the Proposed Facilities, this duty must be discharged before the Board grants any leave to construct;
- c. The project being proposed by Goldcorp is not an end-to-end solution and is in fact inadequate to meet its projected electricity requirements;
- d. The effects of the project on consumers remains unknown:
 - i. there is no Connection and Cost Recovery Agreement with Hydro One Networks Inc.; and
 - ii. there is no evidence of the potential price impacts on consumers.
- e. Continued use of the Proposed Facilities beyond 2014 will not be possible without supplementary measures in place—their impact on reliability and quality of service remains unknown.

³ *Ontario Energy Board Act*, S.O. 1998, at section 92, 96(2).

I. PERMITS AND CONSULTATION OUTSTANDING

5. In all section 92 Applications, compliance with legislative requirements must be proven.⁴ In this case, the bulk of Goldcorp's proof remains outstanding.
6. The Class EA for Resource Stewardship and Facility Development for this project must be approved before the issuance of land tenure such as leases, land use permits, and Licences of Occupation under the *Public Lands Act*.⁵
7. The MNR has not approved Goldcorp's Class EA for Resource Stewardship and Facility Development because the MNR continues to be dissatisfied with the level of consultation that has occurred with LSFN.⁶ As such, Goldcorp has not secured Land Use Permits from the MNR that are necessary for construction to proceed on ***any part*** of the Proposed Facilities.⁷
8. Similarly, Goldcorp has not secured a Forest Resource License issued under the *Crown Forest Sustainability Act*, which is required to harvest of all Crown owned merchantable timber along the right of way.⁸
9. To date, Goldcorp has not completed a host of legislative requirements, including:
 - a. An Operational Statement for Overhead Line Construction, from the Federal Department of Fisheries and Oceans;
 - b. *Navigable Waters Protection Act permits*, from Transport Canada;

⁴ Ontario Energy Board Staff Proposal, Minimum Filing Requirements for Transmission and Distribution Rate Applications and Leave to Construct Projects, EB-2006-0170.

⁵ DRAFT ESR, Goldcorp's Proposed 115kV Transmission Line, February 2011 at pg. 12.

⁶ Cross-examination of Angela Brooks, Motion Hearing Transcript at page 40, line 11.

⁷ Cross-examination of Angela Brooks, Motion Hearing Transcript at page 37, line 5 and page 42, line 6.

⁸ DRAFT ESR, Goldcorp's Proposed 115kV Transmission Line, February 2011 at pg. 12.

- c. Aviation Construction Clearance Permit, from Transport Canada;
- d. Temporary Entrance Permit, from the Ministry of Transportation;
- e. An Encroachment Permit, from the Ministry of Transportation;⁹ and
- f. Easements from the Mining Commission of Ontario.¹⁰

10. Goldcorp cannot demonstrate that it has complied with the legislative requirements for the Proposed Facilities. Granting leave to construct at this time would be premature, and potentially adverse to the public interest.

The Duty to Consult with Lac Seul First Nation Has Yet to be Discharged

11. The MNR has acknowledged that the duty to consult is triggered by the Proposed Facilities, and that under the EA process it has not been discharged.¹¹ But consultation is only meaningful if it can influence the Crown decision-making process.¹²

12. At this juncture, the Board's decision is the final Crown decision that will enable construction of the Proposed Facilities to proceed. Granting leave to construct with the knowledge that consultation remains outstanding, presents (at least) two basic problems:

- a. it effectively narrows the range of possibility for adequate accommodation before consultation has even concluded; and

⁹ Motion Hearing, June 7, 2011, Undertaking JM 1.1.

¹⁰ Cross-examination of Curtis Pedwell, Motion Hearing Transcript, June 7, 2011, page 25 – 27, line 26.

¹¹ Cross-examination of Angela Books, Motion Hearing Transcript, June 7, 2011 at page 9, line 6 - 13.

¹² See *Carrier Sekani Tribal Council v. British Columbia (Utilities Commission)*, [2010] 2 S.C.R. 650, at para 35; *Haida Nation v. British Columbia (Minister of Forests)* 2004 SCC 73, [2004] 3 SCR 511 at para 47 [*Haida Nation*]; *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69 [2005] 3 S.C.R. 388 at para 54.

- b. it presents the Crown with a conflict if the Board has already granted leave to construct, and the consultation later reveals that the appropriate accommodation is the cancellation of Goldcorp's Proposed Facilities.

13. Such a scenario provides little certainty to proponents, and denigrates the rule that the Crown must always act honourably when dealing with Aboriginal peoples.¹³

14. The Board should refrain from making its decision on this Application until the MNR has confirmed that duty to consult has been fully discharged.

II. NO DEMONSTRATED NEED FOR THE PROPOSED FACILITIES

15. The Proposed Facilities are allegedly necessary to allow Goldcorp to realize its Mine Development Plan in Red Lake, remove the need for Goldcorp to utilize diesel generation, and to free up capacity to service new demand in Ear Falls/Red Lake.¹⁴

16. These justifications should be adopted with caution because they tend to promote Goldcorp's corporate self-interest, as opposed to the broader public interest. Meanwhile, other considerations that are not in line with Goldcorp's corporate self-interest have been largely ignored in Goldcorp's Application.

¹³ *Haida Nation* at para 17.

¹⁴ Goldcorp, Leave to Construct Application and Evidence, EB-20011-0106, at page 3.

17. For instance, Goldcorp has not fully considered conservation and demand management activities which could include lowering production.¹⁵ Goldcorp claims that it is engaged in three (3) conservation and demand management activities,¹⁶ but does not reference any evaluation of additional conservation measures that could be taken.
18. In addition, according to Goldcorp's own pre-filed evidence, the Proposed Facilities may not negate the need for diesel generation. In particular, the IESO's SIA indicates that the Proposed Facilities may not meet Goldcorp's initial supply demands and that Goldcorp will need to "make up the balance through other means, including from generators, not connected to the IESO-controlled grid".¹⁷
19. The Proposed Facilities are purported to deliver the additional energy that Goldcorp requires to meet its current Mine Development Plan. However, the specifics of the Plan have not been disclosed to the Board, affected stakeholders including LSFN, or the public.¹⁸
20. The Board is being asked to approve a project it knows very little about. How this project meets the needs of Goldcorp's planned development is unknown. Evidence pertaining to the long-term effect on electricity reliability and quality is unavailable, and Goldcorp has not fully addressed the need for additional projects.¹⁹

¹⁵ Goldcorp, Leave to Construct Application and Evidence, EB-20011-0106, at pg. 55.

¹⁶ Goldcorp, Leave to Construct Application and Evidence, EB-20011-0106, at pg. 56.

¹⁷ IESO, System Impact Assessment Report, January 21, 2011, at pg i. In Goldcorp Leave to Construct Application and Evidence, EB-20011-0106 page 71.

¹⁸ Goldcorp Responses to Interrogatories, EB-2011-0160-17, Ex C/T2/S16 page 1, LSFN question 16(c).

¹⁹ Goldcorp Responses to Interrogatories, EB-2011-0160-17, Ex C/T2/S2 page 1-2, LSFN question 2 (a-c).

21. The record is lacking in verifiable evidence with respect to the need for this *particular* project, and to Goldcorp's stated load forecast. Without a complete evidentiary record, this Board cannot be satisfied that the Proposed Facilities are actually in the public interest.

III. INABILITY OF THE PROPOSED FACILITIES TO MEET ITS PURPOSE

22. The details of the Mine Development Plan remain unavailable, but the evidence clearly demonstrates that Proposed Facilities will not satisfy Goldcorp's energy requirements – unless additional reinforcements and equipment are installed.²⁰

23. The Proposed Facilities do not actually alleviate the energy need or achieve the purpose for which it is proposed. Full use of the Proposed Facilities will likely require any number of the following:

- a. providing reactive compensation;
- b. installing a Load Rejection Scheme;
- c. upgrading the existing circuits;
- d. installing new transmission circuits;
- e. installing generation that is independent of drought; or
- f. purchasing electricity produced in Manitoba.²¹

24. It remains unclear who will install the above (i.e. Goldcorp or Hydro One) and what the impact will be on prices, reliability, and quality of power from the

²⁰ Goldcorp Responses to Interrogatories, EB-2011-0160-17, Ex C/T2/S6 page 1, LSFN question 6 (a-b).

²¹ Goldcorp Responses to Interrogatories, EB-2011-0160-17, Ex C/T2/S1 page 2, LSFN question 2(a).

installation.²² By extension, it is also unclear what impacts these other facilities will have on the environment, Lac Seul First Nation, and consumers.

25. Goldcorp and/or Hydro One should provide an “end-to-end” solution that ***actually meets*** all of Goldcorp’s requirements and allows LSFN and the Board to assess the impacts and public interest of the complete project.

IV. NO EVIDENCE OF IMPACT ON PRICES

26. At this time, there is no substantive evidence before the Board to demonstrate what effect this project will have on the interest of consumers with respect to prices.²³

27. Following construction, Goldcorp intends to transfer the line to Hydro One Networks Incorporated (HONI) by way of a Connection and Cost Recovery Agreement. However, no Connection and Cost Recovery agreement has been completed because detailed engineering and final costing information is currently unavailable.²⁴ Goldcorp asserts that it has been informed by Hydro One that the terms of the asset transfer must not result in any negative impacts on electricity rates.²⁵ But on the whole, the record is devoid of hard data pertaining to rates or potential costs to consumers once the line is transferred to HONI.

28. Goldcorp expects that Hydro One will make any impacts on consumer rates available in the first Hydro One transmission rate application filed subsequent to

²² Goldcorp Responses to Interrogatories, EB-2011-0160-17, Ex C/T2/S13 page 1, LSFN question 13 (a-c).

²³ Cross examination of Curtis Pedwell, Motion Transcript, June 6, 2011 at page 24, lines 3 – 10; Goldcorp Responses to Interrogatories, EB-2011-0160-17, Ex C/T2/S13 page 1, LSFN question 13 (a-c).

²⁴ Goldcorp Responses to Interrogatories, EB-2011-0160-17, Ex C/T1/S2 page 1, Board Staff question 2.

²⁵ Goldcorp Responses to Interrogatories, EB-2011-0160-17, Ex C/T2/S13 page 1, LSFN question 13(a).

the transfer of the subject facilities.²⁶ Impacts will only be known to the public once the Proposed Facilities have already been constructed, heavily utilized, and then transferred – that is to say, once it is too late.

29. Goldcorp acknowledges that the Proposed Facilities will not (absent additional measures which could include additional transmission facilities) satisfy the needs of Goldcorp and the Red Lake area.²⁷ These additional facilities are not the subject of this Application, however they are unavoidably linked because ***the Proposed Facilities cannot fully operate without them.*** Nonetheless, the rate impact of these additional facilities remains unknown.

30. In sum, the impact of the Proposed Facilities on the interests of consumers, with respect to prices, is entirely unknown at this time.

V. NO EVIDENCE OF IMPACT ON RELIABILITY AND QUALITY OF SERVICE

31. It is notable that Goldcorp only received a Notification of Conditional Approval for Connection from the IESO under the SIA, subject to specific requirements.²⁸

32. The IESO's SIA highlights that the Proposed Facilities will require system upgrades before load above 57 MV A can be added on the 115 kV line E2R.²⁹

33. The IESO's SIA indicates that load levels in excess of 73 MVA will require supplementary measures that "include, but are not limited to: upgrading the existing circuits, installing new transmission circuits, or installing additional

²⁶ Goldcorp Responses to Interrogatories, EB-2011-0160-17, Ex C/T2/S13 page 1, LSFN question 13(b).

²⁷ Goldcorp Responses to Interrogatories, EB-2011-0160-17, Ex C/T2/S2 page 1, LSFN question 2(a).

²⁸ Goldcorp, Leave to Construct Application and Evidence, EB-20011-0106, at pg. 79.

²⁹ Customer Impact Assessment, June 10, 2011, at 3.0 Impact on Customers. Specifically, 26 MVAR cap banks at Ear Falls SS and a Load Rejection scheme.

(drought independent) generation".³⁰ Goldcorp's own load forecast indicates that this load level will be reached by 2014.³¹

34. In three years, use of the Proposed Facilities will not be possible without these supplementary measures. However, their impacts have not been studied and their impact on reliability and quality of service remains unknown.

CONCLUSION

35. The totality of evidence before the Board fails to demonstrate that the Proposed Facilities are in the public interest:

- a. Goldcorp has not received the required approvals, permits and licences to proceed with the project;
- b. The MNR has confirmed that the duty to consult has not been discharged with respect to the Proposed Facilities;
- c. Goldcorp has not demonstrated a need for the specific facilities that it proposes to build, and acknowledges that these facilities are inadequate to meet projected electricity requirements;
- d. The effects of the project on consumers is unknown:
 - i. there is no Connection and Cost Recovery Agreement with Hydro One Networks Inc.; and
 - ii. there is no evidence of the potential price impacts on consumers.

³⁰ IESO, System Impact Assessment Report, January 21, 2011, at pg ii. In Goldcorp Leave to Construct Application and Evidence, EB-20011-0106 page 71.

³¹ Goldcorp, Leave to Construct Application and Evidence, EB-20011-0106, at page 125.

- e. Continued use of the Proposed Facilities beyond 2014 will not be possible without supplementary measures in place. The impact on reliability and quality of service, flowing from these associated measures, remains unknown.

36. The Board is charged with a mandate to assess whether or not granting Goldcorp's Application suits the public interest. This task is an important one: the Board stands to shield the public from a project that is designed to satisfy first and foremost Goldcorp's corporate self-interest. Hard evidence builds a foundation on which the Board can decide if this project is in the public interest. In this case, that foundation has yet to be built.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 28th DAY OF JUNE 2011.

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