

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.

NOTICE OF MOTION

WHEREAS:

- a) Lac Seul First Nation wrote a letter to the Board on June 27, 2011 in which it requested a revision to Procedural Order No. 1 with respect to filing deadlines for submissions, given Goldcorp's refusal to provide a complete response to interrogatories made by the First Nation;
- b) The Board replied to the First Nation's letter on July 5, 2011 and stated that the Board would not compel Goldcorp to produce Goldcorp's Mine Development Plan ("MDP") and that no further procedural steps were required; and
- c) Lac Seul First Nation had not yet had an opportunity to formally address the issue, and to make complete submissions, before the Board rendered its decision to not compel disclosure of the MDP.

THEREFORE:

The Intervenor, Lac Seul First Nation, will make a motion to the Board on a date and time to be set by the Board, at the Board's Hearing Room, 25th Floor, 2300 Young Street Toronto, ON, M4P 1E4.

THE MOTION is to be heard orally.

THE MOTION IS FOR:

1. An Order that Goldcorp provide full and adequate response to Lac Seul First Nation Interrogatory No. 16A(c) and shall file its Mine Development Plan to the Board to fully and adequately respond to this interrogatory;
2. Alternatively, an Order that Goldcorp provide full and adequate response to Lac Seul First Nation Interrogatory No. 16A(c) and shall file those portions of its Mine Development Plan that are not subject to any client-solicitor privilege, litigation privilege, or settlement privilege, to the Board to fully and adequately respond to this interrogatory;
3. An Order that Goldcorp may request that the full and adequate response to Lac Seul First Nation Interrogatory No. 16A(c) be considered Confidential Information pursuant to Rule 10 and the *Practice and Direction on Confidential Filings*, but, pending the Board's determination of confidentiality, a response shall be provided in the interim to those representatives of the parties who have executed and filed the Board's confidentiality Declaration and Undertaking; and
4. Such further and other relief as counsel may request and that the Board deems appropriate and just.

THE GROUNDS FOR THE MOTION ARE:

1. The Board made a decision that it would not compel Goldcorp to disclose its MDP. This decision was made when Lac Seul First Nation had not yet formally

requested an Order for the provision of full and adequate response to Lac Seul First Nation's interrogatories, and had not yet had the opportunity to make submissions with respect to the legal issues that arise with respect this matter.

2. Goldcorp refused to provide a complete answer to LSFN interrogatory 16A(c). Goldcorp claimed the MDP is confidential and that Goldcorp claims a confidential communication privilege with respect to it.
3. The MDP is directly relevant to the Board's decision, and should be made available to the Board and the parties to this proceeding.
4. The Board has authority to compel disclosure under the *Statutory Powers and Procedures Act* R.S.O. 1990, c.S.22 and its own *Rules of Practice and Procedure*.
5. There is no known class of privilege attached to the MDP.
6. It is a fundamental principle of law that a court or tribunal should have access to all relevant evidence. Claiming "privilege" over the MDP does not satisfy the legal test required for exemption from this principle.
7. Confidential and commercially sensitive information can be protected through the Boards own rules regarding confidential filings.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion.

1. The Application of Goldcorp.
2. Interrogatory Response from Applicant Goldcorp dated June 17, 2011.
3. Correspondence to the Ontario Energy Board from Lac Seul First Nation, dated June 27, 2011.

4. Correspondence to the Ontario Energy Board from Goldcorp dated June 28, 2011.
5. Correspondence to the Ontario Energy Board from Lac Seul First Nation dated July 4, 2011.
6. Correspondence from the Ontario Energy Board to Lac Seul First Nation dated July 5, 2011.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 7th DAY OF JULY 2011.

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