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File No.: 95818

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DELIVERED

Ms. Kirsten Walli
Secretary
Ontario Energy Board
Suite 2700, 23 Yonge Street (27th Floor)
P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli,

Re: EB-2011-0106

We are in receipt of an e-mail from counsel for Lac Seul First Nation ("LSFN") enclosing a Notice of Motion dated July 7, 2011 requesting an oral hearing for a motion to require Goldcorp to file its Mine Development Plan.

Goldcorp opposes LSFN's request on the following grounds:

1. Goldcorp has filed all information required under Chapter 4 of the Ontario Energy Board Filing Requirements for Transmission and Distribution Application and the Board's acknowledgement letter of April 20th, 2011 did not note any incompleteness in the information filed.
2. Procedural Order No. 1 in this matter required Goldcorp to provide responses to interrogatories on or before June 17th which Goldcorp did. LSFN had two weeks and six days in which to request an oral hearing but did not do so until July 7th. Goldcorp therefore submits that LSFN's request is untimely.
3. Procedural Order No. 1 required Goldcorp to provide its Responding Submissions by today, July 8th, 2011. Goldcorp's Responding Submissions are almost ready to be filed. Goldcorp submits that to request the Board to reopen the case at this time in order to deal with this interlocutory ruling is an abuse of process.
4. The Board's decision of July 9, 2011 to not require Goldcorp to file its Mine Development Plan was an interlocutory decision within the Board's discretion to determine what evidence is required in order to make a decision in the public interest.
5. Goldcorp submits that the Board has no power to review its own interlocutory rulings. The Board's power to review its own decisions is found in Section 21.2 of the *Statutory Powers Procedure Act* which states:

Power to review

21.2(1) A tribunal may, if it considers it advisable and if its rules made under section 25.1 deal with the matter, review all or part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order. 1997, c.23, s.13(20).

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Time for review

(2) The review shall take place within a reasonable time after the decision or order is made.

Conflict

(3) In the event of a conflict between this section and any other Act, the other Act prevails.
1994, c. 27, s. 56(36).

6. The phrase, "if its rules deal with the matter" in section 21.2(1), are important. Part VII of the Ontario Energy Board Rules of Practice and Procedures (Revised November 16, 2006 and July 14, 2008) deals with the topic of the Board reviewing its own decisions: Section 42.01 permits a review of "a final order or decision" only, and not of an interlocutory decision.
7. Since the Board's decision of July 5th to not require Goldcorp to file its Mine Development Plan was an interlocutory decision, the Board does not have power to review it once the panel became functus with respect to that issue on July 5th, 2011.
8. In summary, Goldcorp submits that LSFN's request for an oral hearing at this stage in the proceedings is untimely, an abuse of process and is in any case, not a remedy that the Board can grant.

For these reasons, Goldcorp submit that the Board should deny LSFN's request for an oral hearing for the purposes stated in LSFN's Notice of Motion.

Yours truly,

Ian Blue
IB/nr