

ONTARIO ENERGY BOARD

APPLICATION OF

GOLDCORP CANADA Ltd. and GOLDCORP INC. ("GOLDCORP") for Leave to Construct a 115 kV Electricity Transmission Line, and for Ancillary Orders, File No. EB-2011-0106

RESPONDING SUBMISSIONS OF GOLDCORP

SUBMISSIONS IN CHIEF

1. Goldcorp submits that the Board should grant leave under section 96 of the *Ontario Energy Board Act, 1998* (the "Act") to carry out the work necessary to complete Goldcorp's proposed facilities described in the Application (Exh. A, Tab 2, Sch. 1).
2. Section 96 of the Act states:

96.(1) If, after considering an application under section 90,91 or 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.

(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.
3. On the section 96 issues Goldcorp's evidence is uncontradicted. Goldcorp notes that none of the intervenors adduced evidence contrary to Goldcorp's evidence except Lac Seul First Nation ("LSFN") which adduced contrary opinion evidence on the issue of consultation with First Nations, and to which Goldcorp responds below. Goldcorp

submits, therefore, that its proposed facilities are in the public interest, will have no adverse effect on electricity prices and will improve the quality and reliability of electricity served to consumers in the Red Lake area.

PUBLIC INTEREST

4. Reliability:

- At present, the maximum coincident load that could be supplied by Hydro One Networks Inc's ("HONI") E2R circuit is 63 MVA (Exh. B, Tab 6, Sch. 3, p. iii). The maximum capacity of the Red Lake Transformer Station ("RLTS"), however, is only 57 MVA (Exh. B, Tab 6, Sch. 3, p. i). Goldcorp's proposed facilities, therefore, will allow the full potential of HONI's E2R circuit to be utilized downstream of Ear Falls and thus makes electricity more reliable for consumers in the Red Lake area.
- Goldcorp's planned loading of its proposed facilities will reduce Goldcorp's loading on the RLTS which will free up capacity that may, in turn, serve other HONI customers, including Rubicon Minerals Corporation, who can connect downstream of the RLTS and be served as a HONI distribution customer, again enhancing the reliability of the electricity supply in the Red Lake area.
- As Goldcorp's analysis of alternative sources of electricity shows (Exh. B, Tab 3, Sch. 1; Exh. C, Tab 2, Sch. 5; Exh. C, Tab 2, Sch. 6), there is no superior solution to increasing the availability of reliable electricity in the Red Lake area in the period 2011-2013.

5. **Quality:**

- Goldcorp's proposed facilities will enhance the quality of electricity service for electricity consumers in the Red Lake area. Goldcorp's evidence is that its Balmer Complex operations use very large hoist motors that start and then regenerate into the system every three minutes or so, causing both needle peaks and rapid voltage drops known as *voltage-flicker*. Among other things *voltage-flicker* causes lights and television to darken and then brighten. Connecting the Balmer Complex operations to the proposed facilities is expected to reduce the *voltage-flicker* and improve the quality of electricity service in the Red Lake area (Exh. B., Tab 1, Sch. 3; Exh. B, Tab 3, Sch.1; Exh. B, Tab 4, Sch. 4).

6. **Price:**

- The evidence is that Goldcorp is paying all costs associated with the construction of the proposed facilities and intends to turn the connection to HONI's E2R line and the 10.7 km of 115 kV line over to HONI at no net cost to HONI (Exh. B, Tab 6, Sch. 1, p. 2; Transcript p. 24, lines 3-10). Therefore the proposed facilities will not adversely affect electricity prices for consumers.

7. Goldcorp submits that the Independent Electricity System Operator's ("IESO") System Impact Assessment ("SIA") of the proposed facilities which was prepared in accordance with the Grid Connection Requirements of the Market Rules and the associated IESO Connection Assessment and Approval Process (Exh. B, Tab 6, Sch. 3) confirms the need for this project. The SIA conditionally approves the project, finds that it meets the

objective of the SIA, finds that Goldcorp's proposed transmission facilities adequate and further finds that they will not adversely impact the IESO Controlled Grid, provided that the requirements set out in the SIA are met.

8. The need for Goldcorp's project is also confirmed by its load forecast completed with input from Rubicon Minerals and information from HONI (Exh. B, Tab 6, Sch. 4). Rubicon Minerals has indicated to both Goldcorp and HONI that it would like to utilize any capacity at the RLTS freed up by Goldcorp's loading of the proposed facilities.

NO ADVERSE EFFECT ON PRICE

9. Goldcorp submits that there is no evidence that its proposed facilities will have an adverse impact on electricity prices.
10. The total cost of the project is estimated to be \$15 million. Upon completion of the project, Goldcorp intends to transfer ownership of the connection to HONI's E2R line and the 10.7 km 115 kV transmission line to HONI at no cost and to retain ownership of the Balmer Complex Transformer Station. All project costs will be funded by Goldcorp; details of the project economics have been filed (Exh. B, Tab 4, Sch. 3). HONI has informed Goldcorp that the terms of the asset transfer must not result in any negative impacts on electricity rates (Exh. C, Tab 1, Sch. 2; Exh. C, Tab 2, Sch. 13). This outcome will be achieved through the administration of the Transmission System Code Economics Evaluation and HONI's Connection and Cost Recovery Agreement.

11. Goldcorp notes, with thanks, that the Board Staff's Submissions of June 28th, 2011 support Goldcorp's Application.
12. For these reasons in chief, Goldcorp respectfully requests that the Board grant its Application.

RESPONSE TO SUBMISSIONS OF LSFN

13. Goldcorp will respond to the Submissions of LSFN in the same order as points are dealt with in LSFN's Submissions.

PERMITS OUTSTANDING

14. Goldcorp submits that the fact that it has not received all permits required to allow construction of its proposed project is not a valid reason for the Board to refuse to grant Goldcorp leave to carry it out. The Board's normal practice is to grant leave to carry out work conditional on the successful completion of other permitting and assessment procedures. See: Direction on Questions of Jurisdiction and Procedural Order No. 4 in EB-2009-0120 of November 18, 2009 ("Yellow Falls Decision") (Yellow Falls Decision¹ at p. 10). Goldcorp notes that Board's Staff Submissions support this position.

¹ http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/165513/view/default_order_Yellow%20Falls_20091216.PDF

15. In that regard, in the Yellow Falls Decision the Board said:

Board approvals of leave to construct applications invariably include conditions which require the proponent to procure all of the necessary permits and approvals associated with the project. This means that the Board's approval is strictly conditional on the successful completion of the various permitting and assessment processes. Under this architecture there is no danger that the project will somehow begin without all of the necessary regulatory steps mandated by various agencies of government being completed....

In fact, in the Board's view, the only way to ensure that the appropriate measure of consultation and accommodation occurs with respect to any of the requisite permits, approvals, and assessments of the relevant government agencies is to follow the Board's typical process to make its approval of the leave to construct conditional upon completion of those processes and procurement of those permits....

16. Goldcorp recognizes that other permits and approvals, associated with the proposed project must be obtained before it can commence construction and that the Crown must complete any remaining required consultation in that regard. Goldcorp, therefore, is prepared to accept a Condition of Approval requiring it to obtain any other required permits and approvals associated with the project (Transcript, page 83, lines 6-8; page 47, lines 17-22.)

DUTY TO CONSULT YET TO BE DISCHARGED

17. In its Submissions, LSFN states that:

2. The Proposed Facilities lie entirely within the traditional territory of Lac Seul First Nation ("LSFN"). 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. . . .
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.

Goldcorp submits that there is no merit in LSFN's position on the Consultation issue.

18. In its Yellow Falls Decision the Board said as follows:

The issue here is the extent to which the Legislature has endowed the Board with the power to determine questions of law with respect to leave to construct applications. Because the Board's power to determine questions of law is specifically limited in section 19 to areas within its jurisdiction, the Board finds that it has no authority to determine constitutional issues, such as the adequacy of consultation with Aboriginals, in relation to any matters beyond the criteria in section 96(2). This is consistent with case law referenced above.

In the Board's view this finding is sufficient to dispose of this issue in this case because none of the issues raised by WTC relate to the criteria in section 96(2). The Board finds however that there is another reason, also related to its jurisdiction, which supports its determination that it ought not consider the adequacy of consultation.

In its submissions WTC relied heavily on the proposition that the Board was in some senses the central or final decision-maker with respect to this project.

That proposition is simply not true. With respect to application under section 92 the Board does not make, and is not empowered to make, any decisions with respect to Crown lands rights of way, environmental protection and assessment, protection of species, community or workers safety, socio-economic effects, or any one of a significant number of approvals and permits required by the proponent with respect to such projects. Board approval is but one milestone on the path to project completion.

Each of the approvals and assessments has its own drivers and requires distinct expertise. In our review of the materials filed with this application, it became clear that issues respecting accommodation and consultation with Aboriginal peoples have typically been considered within the rules and protocols associated with the environmental assessment. In this case, it appears to be common ground that the environmental assessment is the appropriate context for the consideration of Aboriginal treaty and land rights. WTC specifically indicated in the evidence that it filed that it considered such matters to fall within the scope of the environmental assessment.

In accordance with the rules and procedures governing the environmental assessment process the Minister of Environmental 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. If WTC continues to have concerns respecting the adequacy of such consultation with the environmental assessment process the appropriate measure for it to take is to challenge the Minister, and if necessary, invoke the supervision of the courts. The same is true for each of the other permitting and approvals processes undertaken by various government agencies with respect to this project.

To assume such jurisdiction over other government agencies, would, in the Board's view, be insupportable from a legal point of view, and also grossly inefficient and unsatisfactory from a practical point of view.

19. Goldcorp submits that the approach taken by the Board in its Yellow Falls Decision has subsequently been supported by the decision of the Supreme Court of Canada in *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, [2010] 2 S.C.R.650² [“Rio Tinto Case”], at paragraphs 60-61 which states:

[60] ...A tribunal has only those powers that are expressly or implicitly conferred on it by statute. In order for a tribunal to have the power to enter into interim resource consultation with a First Nation, pending the final settlement of claims, the tribunal must be expressly or impliedly authorized to do so. . .

[61] A tribunal that has the power to consider the adequacy of consultation, but does not itself have the power to enter into consultations, should provide whatever relief it considers appropriate in the circumstances, in accordance with the remedial powers expressly or impliedly conferred upon it by statute. The goal is to protect Aboriginal rights and interests and to promote the reconciliation of interests called for the *Haida Nation*.

20. As the Supreme Court stated in the above passage, the Board has only those powers that are expressly conferred on it by the Act. In the Yellow Falls Decision the Board made a decision on a question of law, namely that in an application for leave to carry out an electricity transmission line, the Board does not have the power to consider whether the degree of consultation with First Nations has been adequate. Since, the Rio Tinto Case holds that the Board’s powers are limited by its statutory powers and in the Yellow Falls Decision the Board has decided that it does not have jurisdiction to consider the adequacy of Crown consultation, that finding must be taken to be authoritative, especially so since no party to the Yellow Falls Decision challenged the Board’s ruling in court. Goldcorp therefore submits that the Board cannot consider the adequacy of Crown consultation and that Goldcorp is therefore entitled to obtain the Board’s Leave to carry out its proposed project, despite LSFN’s submission.

² <http://scc.lexum.org/en/2010/2010scc43/2010scc43.html>

NO DEMONSTRATED NEED FOR THE PROPOSED FACILITIES

21. Goldcorp submits that the Board should not accept LSFN's argument that there is no demonstrated need for the proposed project and that Goldcorp's leave to construct application should be dismissed because of that failure.
22. First, there is an issue caused by the interplay of subsections 96(1) and 96(2) of the Act about whether the need for the facility is even a decisional issue in this case. Goldcorp submits that the question of "need" is not determinative because under subsection 96(2) of the Act, the Board may only consider the interests of consumers with respect to prices and the reliability and quality of electricity service. Second, and answering LSFN's argument as it reads, if Goldcorp's project is not needed, why would Goldcorp, a public for-profit company, spend millions of dollars on it? Third, Goldcorp adduced evidence of the need for the project in its prefiled evidence (Exh. B, Tab 1, Sch. 3). Goldcorp's witnesses were present on June 7, 2011 to testify about Goldcorp's Application, including the question of need. LSFN's counsel asked them no questions about the need for the project and LSFN adduced no contrary evidence to Goldcorp's on the question of need.
23. Goldcorp submits that LSFN's argument in paragraphs 15-21 of LSFN's Submissions do not address the question of need. Instead they are criticisms that are more emotive than material. (To avoid confusion, LSFN's position in the points below is underlined.)

- a. Paragraph 16: Goldcorp's justifications promote Goldcorp's corporate self-interest, as opposed to the broader public interest. This point is no answer to the benefits of Goldcorp's project described in paragraph 4 and 5 above.
- b. Paragraphs 17 and 18: Goldcorp's project may not completely obviate the need for diesel fired generation in the future. In the best case, the proposed project will assist in eliminating the need for diesel fired generation in the Red Lake area. Goldcorp's proposed project is at least capable of delaying the need for diesel fired generation for several years and stalling the undesirable environmental effects of diesel fired generation for a corresponding period.
- c. Paragraph 19: Goldcorp has not provided its Mine Development Plan. The Board's ruling of July 5th, 2011 found that Goldcorp was not required to file its Mine Development Plan.
- d. Paragraphs 20-21: Goldcorp's evidence is insufficient to prove need. Goldcorp has addressed the need issue in paragraphs 4, 5, 6, and 23 above and which is to add only that the OEB Staff submitted that the need for this project has been established and that the proposed facilities represent the best of the alternatives examined (Exh. B, Tab 3, Sch. 1).

INABILITY OF THE PROPOSED FACILITIES TO MEET THEIR PURPOSE

24. Goldcorp submits that the Board should reject LSFN's argument that Goldcorp's Application for Leave to Construct should be dismissed because its proposed facilities will not achieve the Red Lake load forecast (Exh. B, Tab 6, Sch. 4) without adding the improvements listed in the SIA (Exh. B, Tab 6, Sch. 3).

25. Goldcorp's uncontroverted evidence is that its proposed facilities are required to relieve the existing bottle-neck at the RLTS, to free up capacity for others and to improve the quality of electricity service by reducing the *voltage-flicker* problem in the Red Lake area. That is as high as Goldcorp has ever put the purpose of its proposed facilities. If approved, the facilities will meet that purpose.
26. Improvements to the electricity system in the Ear Falls – Red Lake area may be the subject of possible future initiatives by HONI, Goldcorp or others which may be the subject of future applications. LSFN would have the ability to seek intervenor status and make its views known in those proceedings.

NO EVIDENCE OF IMPACT ON PRICES

27. Goldcorp submits that the Board should not accept LSFN's argument in paragraph 26 of its Submissions that there is no substantive evidence before the Board to demonstrate what effect this project will have on the interests of consumers with respect to prices. Goldcorp repeats its submissions on Price in paragraphs 9-11 above and again states that there is no evidence that the proposed project will adversely affect electricity prices for consumers.
28. As LSFN references, (Transcript, p. 24, line 3-10) the evidence of Goldcorp's witness is that Goldcorp is paying for the construction of the line in its entirety and will turn it over

to HONI at no net cost to HONI. Also, the rate impacts, if any, of the proposed additional facilities would be addressed in HONI's rate cases.

NO IMPACT ON RELIABILITY AND QUALITY OF SERVICE

29. Goldcorp submits that the Board should reject LSFN's argument under this heading.

Goldcorp repeats paragraph 4 and 5 of its Submissions in chief - that it has provided evidence that the proposed project will improve the reliability and quality of electricity service for consumers.

30. For all these reasons, Goldcorp submits that the Board should dismiss the requests made by LSFN and grant leave to Goldcorp to carry out the work on its proposed project.

All of which is respectfully submitted.

Dated at Toronto, this 8th day of July, 2011.



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