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File No.: 95818

August 10, 2011

DELIVERED

Ms. Kirsten Walli  
Secretary  
Ontario Energy Board  
Suite 2700, 2300 Yonge Street (27<sup>TH</sup> Floor)  
P.O. Box 2319  
Toronto, ON M4P 1E4

Dear Ms. Walli,

**Re: OEB File No. EB-2011-0106**  
**Goldcorp Application for Leave to Construct 115 kV**  
**Transmission Facilities in the Municipality of Red Lake**

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Goldcorp requests that the Board consider this letter as Goldcorp's response to the Costs Submissions of Lac Seul First Nation (LSFN), filed with the Board and served on Goldcorp on Wednesday, August 3, 2011.

Goldcorp would like to say that it considers LSFN's intervention and participation in this proceeding to have been a positive development in Goldcorp's and LSFN's ongoing relationship. It has already led to constructive dialogue about this project and opportunities for members of LSFN to participate in it. As LSFN has itself noted, it waived its request for an oral hearing thereby saving the Board processing time in this proceeding, and submitted professional and relevant interrogatories. For this responsible participation in the Board's process, Goldcorp agrees that LSFN should be entitled to an award of costs.

Regretfully though, Goldcorp cannot support the quantum of \$36,502.76 for costs requested by LSFN. It considers that amount excessive in the circumstances. Goldcorp instead submits that the amount that the Board should award to LSFN should be in the range of \$12,000 to \$15,000. This range represents an amount that is appropriate for the degree and success of LSFN's participation in this proceeding. In the Appendix to this letter Goldcorp presents its detailed submissions on LSFN's Cost Submissions and its submissions on appropriate amounts to be awarded for the specific activities for which costs are sought.

Section 5.01 of the Board's Practice Direction on Cost Awards states that *the Board may consider, amongst other things, whether the party:*

- (h) *addressed issues in its written or oral evidence or in its questions on cross-examination or in its argument which were not relevant to the issues determined by the Board in the process;*
- (i) *engaged in any other conduct that tended to lengthen unnecessarily the duration of the process; or*



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(j) *engaged in any other conduct which the Board found was inappropriate or irresponsible.*

Goldcorp submits that the Board should consider all these matters. In addition, another factor that the Board should take into account is the fact that LSFN was unsuccessful in both the June 7, 2011 motion and in its subsequent efforts to have the Board dismiss Goldcorp's Application. Goldcorp says this because section 5.01 says that *the Board may consider, amongst other things* the factors listed in paragraphs 5.01(a) to (j). Goldcorp submits that success is such an *other thing*. While the Board is not bound by the same costs rules as courts apply, it also cannot ignore them in appropriate circumstances. In court proceedings, costs normally follow the event (e.g., rule 57.01(1) of the Rules of Civil Procedure). In this proceeding, Goldcorp was an Applicant which was not a regular participant in Board proceedings opposed by one active intervenor LSFN which, seemingly for negotiating purposes elsewhere, attempted to prevent approval of urgently needed facilities. Goldcorp submits, therefore, this case was sufficiently akin to a court proceeding for the Board to consider success as a factor in awarding costs.

#### **Addressed Non Relevant Issues**

In paragraph 8 of its Costs Submissions, LSFN states that *Lac Seul made a conscious effort to avoid raising issues related to the duty to consult*. However Mr. Leitch's cross-examination of the Goldcorp witnesses, in fact, focused on the degree to which Goldcorp had consulted with LSFN and on attempting to colour LSFN's response to those consultation efforts favourably. It then, to a lesser extent, canvassed environmental issues. None of his cross examination was about the subject of the motions, namely: the need to start constructing the Balmer Complex Transformer station as soon as possible and the 115 kV line by September 1, 2011 or to the section 96(2) issues of *prices and the reliability and quality of electricity service*.

LSFN filed an affidavit of Mr. Chris Angeconeb. Mr. Angeconeb's affidavit contained evidence that Goldcorp had not received all its other government approvals, a fact that Goldcorp itself adduced and was not in dispute. Mr. Leitch also called Mr. Angeconeb as a witness but seemed reluctant to examine him in-chief and limited his examination of Mr. Angeconeb to one question. Goldcorp submits that Mr. Angeconeb's affidavit and the one-question-and-answer evidence in-chief was not useful to the Board in making its decision because the Board had made it clear in the Yellow Falls decision that it would make its own decision about leave to construct in electricity facilities applications, regardless of the state of other government approvals. Goldcorp submits that neither the examination by Mr. Leitch nor the evidence submitted by LSFN were of assistance to the Board.

Again, none of LSFN's participation in the June 7<sup>th</sup>, 2011 Motion related to the section 96(2) issues of *prices and the reliability and quality of electricity service*.

#### **Conduct Unnecessarily Lengthening the Process**

Goldcorp notes that its final Argument on the June 7<sup>th</sup>, 2011 Motion, occupied only seven pages of transcript from pp. 82-89. Its subsequent reply argument was only ten pages from pp. 139-149, for total argument of 17 pages. In contrast, Mr. Leitch's argument on the motion for LSFN took up twenty-eight pages of transcript from pp.90-118. Most oral arguments before the Board are usually shorter and more focused, a model which Goldcorp strived to achieve, because of the Board's onerous agenda.



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LSFN also pressed, without success, for Goldcorp's Mine Development Plan (MDP) after Goldcorp had refused to provide it in an interrogatory response. LSFN then sought it by letter, which the Board denied. Then LSFN, effectively delayed a decision on the main application by bringing a formal motion for production of Goldcorp's MDP on the day before its Final Submissions were due. This caused additional delay. This activity was not useful to the Board.

#### **Other Factors the Board Should Consider**

Here, Goldcorp repeats its submission that the Board should consider LSFN's lack of success throughout the hearing process in determining the appropriate quantum of costs.

Goldcorp points out that LSFN's argument on Goldcorp's June 7<sup>th</sup> motion, that the Board did not have authority to grant the interim orders that Goldcorp was requesting, failed. The Board expressly made no finding on Jurisdiction in its June 20, 2011 decision on the June 7<sup>th</sup> motion. Also, the Board expressly has the power to make interim orders under section 22(7) of the Act. Goldcorp notes again that LSFN was also unsuccessful in pressing for production of Goldcorp's MDP.

Finally, Goldcorp notes that LSFN was completely unsuccessful in any of its final submissions in which it opposed the Board granting leave to construct Goldcorp's proposed facilities. Goldcorp has some difficulty in seeing what that opposition had to do with *prices and the reliability and quality of electricity service*.

#### **Conclusion**

Goldcorp submits that when the above factors are taken into consideration they require LSFN's requested quantum of \$36,502.76 to be substantially reduced. Goldcorp notes that in the Yellow Falls case, EB-2009-0120, the Board's Decision and Order on Cost Awards dated February 10, 2010 awarded \$19,317.83 to Wabun Tribal Council, but for participating in a proceeding that led to the Board's major decision on First Nation Consultation. In the Detour Gold case, EB-2010-0243, the Board's Decision and Order on Cost Awards awarded Taykwa Tagamou Nation \$4,942.46 and Wahgoshing First Nation \$5,963.85 for their participation in the case as intervenors.

Goldcorp submits that the costs that the Board should award to LSFN should be in line with the awards in the Yellow Falls and Detour Gold costs decisions and should take the matters discussed above into account. Goldcorp therefore submits that the costs to be awarded to LSFN in this case should be in the range of \$12,000.00 to \$15,000.00 stated above.

Yours very truly,

Gardiner Roberts LLP

  
Jan A. Blue

Enclosures



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cc Mr. Curtis Pedwell  
Mr. William Major  
Mr. Chris Angecone, LSFN  
Mr. Carl Burrell, IESU  
Ms. Anne-Marie Reilly, Hydro One

TORONTO-#254860-v1-OEB\_letter\_(Aug 4, 2011)

**APPENDIX**  
**Goldcorp's Detailed Submissions on LSFN's Costs**

For **Opening file, Receiving Instructions, Requesting Intervenor Status in s.92 Proceedings**, LSFN is requesting a total of  $\$700 + 561 + 3,510 + 90 = \$4,861$ . Goldcorp submits that the proposed costs are excessive. A reasonable amount for LSFN's 2 page May 9, 2011 letter requesting Intervenor status would be five hours of senior counsels time =  $5 \times \$300 = 1,500$ .

Therefore: Requested 4,861  
Appropriate 1,500  
Reduction 3,361

For **Preparation and Attendance re Motion for Interim Order**, LSFN is claiming  $\$7,050 + \$3,400 + \$1,950 = \$12,400.00$ . Typically two days of preparation are incurred for one active day of hearing. It appears to Goldcorp that Ms. Sobiski was responsible for the preparation for the Motion. Accordingly, Goldcorp submits that \$4,500 of costs should be awarded (Ms. Sobiski: 2 days @ 7.5 hours/day @ \$150/hr = \$2,250; Mr. Leitch: 1 day @ 7.5 hours/day @ \$300/hr = \$2,250).

Therefore: Requested \$12,400  
Appropriate 4,500  
Reduction \$ 7,900

For **Preparation and File Interrogatories for s.92 Proceedings**, LSFN claims \$580.00. Goldcorp considers this amount to be appropriate.

For **Motion for Full and Adequate Response to Interrogatories**, LSFN claims  $\$1,515.00 + \$1,120.00 = \$2,635$ . This amount contains overlap in that both Mr. Moffat and Ms. Sobiski were "drafting" and "revising" the proposed motion record (eg., see "Bill of Costs", p. 14, T. Moffatt for 06/07 and 07/07 and Y. Sobiski for 07/07). In any case, Goldcorp submits that the motion was unsuccessful and of no use to the Board and should be disallowed in its entirety.

Therefore: Requested \$2,635  
Appropriate 0  
Reduction \$2,635

For **Prepare and File Final Submissions for s. 92 Proceedings**, LSFN is claiming  $\$1,905.00 + \$1,470 = \$3,375$  for ten and a half double spaced pages of argument. Goldcorp submits that the amount claimed should be at least cut in half to reflect the fact that none of the arguments were of use to the Board.

Therefore: Requested \$3,375.00  
Appropriate 1,687.50  
Reduction \$1,687.50

As to **Disbursements**, Goldcorp submits that it was only necessary for one counsel, Mr. Leitch, and the witness, Mr. Angeconeb, to travel to Toronto. Therefore Ms. Sobiski's disbursements of  $\$275 + 35.25 + \$57 + \$13.31 + 8.00 + 73.92 + 59.00 + 1,148.08 = \$1,669.56$  should be disallowed.

Therefore: Requested    \$2,961.76  
                   Appropriate   1,292.20  
                   Reduction    \$1,669.56

Goldcorp notes the following immaterial discrepancies between the Disbursements reported on page 15 versus those reported on Form 2.

Description	Amount per p. 15	Amount per Form 2	Difference
Y. Sobiski Meals	\$130.48	\$134.24	\$3.76
C. Angeconeb Airfare	\$709.20	\$709.92	\$0.72

For their Consultant, Tri L. Luu, CFA, LSFN is claiming \$9,660 for fees. A review of Mr. Luu's Bill of Costs shows that he spent seventeen hours reviewing the documents in the case and in conference calls. Goldcorp submits that this is excessive and should be reduced to 8 hours or \$1,840. The costs award should compensate for Mr. Tri Luu preparing draft interrogatories and possible cross-examinations questions for a total of ten hours or 10 X 230 = \$2,300.00.

Therefore Requested    \$9,660.00  
                   Appropriate    4,140.00  
                   Reduction    \$5,520.00

**The table below summarizes Goldcorp's position on an appropriate cost award**

Description	LSFN Claim	Goldcorp Proposal
Proj Mgmt	4,861	1,500
Motion re: Interim Order	12,400	4,500
Interrogatories	580	580
Motion re: IRRS	2,635	0
Argument	3,375	1,687.50
Disbursements	2,961.04	1,292.20
Consultant	9,660	4,140
<b>TOTAL</b>	<b>\$36,472.04</b>	<b>\$13,699.70</b>