



August 17, 2011

ONTARIO ENERGY BOARD
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OUR FILE NO.

VIA EMAIL

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

RE: OEB File No. EB-2011-0106, Reply Cost Submissions in Goldcorp's Application for Leave to Construct 115 Kv Transmission Facilities in the Municipality of Red Lake

The following are the reply submissions of Lac Seul First Nation.

Lac Seul Incurred Costs as a Meaningful Participant

Proceedings before the Ontario Energy Board are not about winning or losing – these proceedings are about safeguarding the public interest. Success is measured by the extent to which the Board has all relevant information, facts, and submissions available for consideration before it makes its decision. Lac Seul First Nation pursued this goal vigorously to ensure that the record before the Board was complete and accurate.

To be clear, in its efforts to achieve that goal, Lac Seul incurred the costs that it did because:

- Goldcorp brought an unsuccessful *exparte* interim motion, which the Board dismissed because Goldcorp failed to consult with all interested parties, including Lac Seul.
- Goldcorp brought another unsuccessful motion on June 7, 2011, where Lac Seul was obliged to raise issues related to jurisdiction that were supported by Board Staff counsel, and to outstanding environmental approvals which Goldcorp had not admitted before

the hearing on June 7, 2011.

- Goldcorp failed to receive approval from MNR for the Class EA, but brought an unsuccessful motion for relief from the requirements of s.92 anyway.
- Goldcorp failed to provide full and complete answers to interrogatories posed by the intervenor Lac Seul First Nation, under a misnomer of “privilege”.
- Goldcorp’s application was incapable of providing the Board with the information necessary to determine if the project was in the public interest. Lac Seul’s participation in the main proceeding was thus valid and necessary, otherwise Goldcorp would have succeeded at the motion on June 7, 2011.

Success is Irrelevant

Generally, the success of the parties is not a relevant consideration in assessing costs for s.92 proceedings. What is relevant is that Lac Seul’s participation in this proceeding was appropriate given the particular facts and issues that were raised that relate the broader question of public interest.

For this reason, comparison to other cases may not be helpful, given the distinct issues and facts in each case. The *Detour Gold* case was a straightforward application that did not involve any interim motions, the proceeding was conducted in writing, and Wagoshig First Nation withdrew before the close of proceedings. Similarly, in the *Yellow Falls* case all proceedings were conducted in writing, the First Nation interrogatories addressed traditional territory boundaries, and there were no motions. Both of these cases are distinguishable from this case because the facts addressed, issues raised, and degree of involvement by the First Nation intervenors differed significantly. These cases might be similar in that “success” was not a relevant factor in the costs awards for either the *Yellow Falls* or *Detour Gold* cases.

No Evidence to Support “Other” Considerations

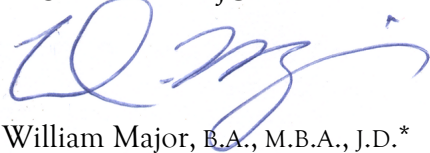
There is no evidence that Lac Seul caused any delay throughout these proceedings, and the Board made no finding to this effect in its decision. There is no evidence, beyond Goldcorp’s speculation, that Lac Seul First Nation used this proceeding for alternate purposes. To suggest otherwise, is simply a misstatement of the facts.

The facts are that Lac Seul First Nation intervened in this proceeding because Lac Seul has a responsibility to protect the environment and the citizens of its traditional territory from any and all impacts flowing from Goldcorp’s proposed facilities. This means ensuring that the project met the purpose for which it was being built, adhered to environmental and government regulations, and accounted for any impacts on citizens,

regional planning, and the land.

Lac Seul First Nation should be compensated in full for the reasonable costs that it incurred in discharging this responsibility.

Sincerely,
KESHEN & MAJOR



William Major, B.A., M.B.A., J.D.*

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