



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 by Goldcorp  
Canada Ltd. and Goldcorp Inc. for leave to construct new  
115 kV transmission facilities in the Municipality of Red  
Lake, and other orders.

**BEFORE:** Ken Quesnelle  
Presiding Member

Cynthia Chaplin  
Member and Vice-Chair

Marika Hare  
Member

## **DECISION AND ORDER ON COST AWARDS**

### **Background**

Goldcorp Canada Ltd. and Goldcorp Inc. acting jointly as Goldcorp ("Goldcorp") filed an application, dated April 25, 2011, with the Ontario Energy Board (the "Board") under section 92 of the *Ontario Energy Board Act*, S.O. 1998, c.15, Schedule B (the "Act"). Goldcorp sought an order of the Board granting leave to construct the following transmission facilities in the Municipality of Red Lake:

- a new switchyard connecting Hydro One Networks Inc's ("Hydro One's") tap on its E2R 115 kV transmission line approximately 2 km southwest of Harry's Corner with the proposed 115 kV transmission line;
- a new 10.7 km 115 kV single circuit transmission line running from the switchyard to the to-be-constructed Balmer Complex Transformer Station; and
- a 115 kV/44 kV Transformer Station at Goldcorp's Balmer Complex.

The Board assigned File Number EB-2011-0106 to the application.

On May 26, 2011, the Board issued its Procedural Order No. 1 granting the Independent Electricity System Operator ("IESO"), Lac Seul First Nation ("LSFN") and Hydro One intervenor status. The Board also determined that LSFN was eligible to apply for an award of costs under the Board's *Practice Direction on Cost Awards*. The IESO and Hydro One indicated that they did not intend to seek an award of costs.

The Board issued its Decision and Order on July 20, 2011, in which it set out the process for intervenors to file their cost claims and to respond to any objections raised by Goldcorp.

The Board received a cost claim from LSFN on August 3, 2011. By letter dated August 10, 2011, Goldcorp raised concerns regarding LSFN's cost claim on the grounds that the costs were excessive and indicated that it could not support an amount of \$36,502.76 as requested by LSFN. Goldcorp stated that the basis for its concerns were as follows:

- LSFN addressed non relevant issues;
- LSFN's activities unnecessarily lengthened the process; and
- LSFN's lack of success (in making its arguments) throughout the hearing process should be a determinative factor of its appropriate cost award.

Goldcorp requested that LSFN's claim should be reduced to an amount in the range of \$12,000 to \$15,000.

On August 17, 2011, LSFN filed a reply to the Goldcorp submission arguing that the cost claim should be compensated in full. LSFN reiterated that it incurred costs as a meaningful participant and that it pursued its goal vigorously to ensure that the record before the Board was complete and accurate. LSFN argued that the success of the

parties was not a relevant consideration in assessing costs for the OEB's s.92 proceedings and comparison to other Board Cost Claim decisions was not always helpful, given the distinct issues and facts and situations in each case. LSFN argued that there was no evidence that LSFN caused any delay throughout these proceedings, and the Board made no finding to this effect in its decision.

## **Board Findings**

The Board does not accept Goldcorp's assertion that the amount awarded should be in the range of \$12,000 to \$15,000 based on the success of LSFN's arguments in this proceeding. The Board notes that it bases its awards on the value that an intervenor adds to a proceeding by participating in a way that assists the Board in its decision making. Intervenors assist the Board by adding useful information to the record and providing the Board with pertinent information regarding its interests that are within the Board's stated scope of the proceeding. The Board notes that LSFN was the only active intervenor in this proceeding and it did indeed assist the Board in the manner noted above.

Goldcorp made a comparison to the Board's Yellow Falls Decision and Order on Cost Awards (EB-2009-0120), issued on February 10, 2010 with LSFN responding that the cases were not comparable. The Board considers the Yellow Falls proceeding to be sufficiently similar in scope and procedural requirements to this case to provide a useful overall guide for assessing an appropriate cost award for LSFN.

In the Yellow Falls proceeding, the Board approved an amount of \$19,317.83 for the contribution of the Wabun Tribal Council. The Wabun Tribal Council claim was based on a total of 55 hours of activity related to the various components of the hearing plus disbursements. LSFN has submitted a cost claim of \$36,502.76 that is based on a total of 202 hours of activity related to the various components of the hearing plus disbursements. While the Board is cognizant of the fact that the majority of the hours claimed are at relatively low tariff rates the Board expects Intervenors to manage their overall efforts in a cost effective manner. The Board does not consider the scale of disparity between the two claims to be commensurate with the disparity of complexities between the respective hearings.

The Goldcorp proceeding contained some additional procedural components and so the Board considers that \$25,000 represents a cost award that is appropriate and

commensurate with the value of LSFN's participation. In recognition of the fact that, unlike the Yellow Falls hearing, the Goldcorp proceeding contained an oral component the Board considers it appropriate to also award LSFN its disbursement expenses of \$2,785.23. The Board finds that Ms. Sobiski's cost claim includes disbursements for meal and mileage that do not comply with the OEB's Practice Direction on Cost Awards. The Board has therefore made these two adjustments.

**THE BOARD THEREFORE ORDERS THAT:**

- 1) Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Goldcorp shall immediately pay Lac Seul First Nation an amount of \$27,785.23.
- 2) Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Goldcorp shall pay the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

**DATED** at Toronto, September 13, 2011.

**ONTARIO ENERGY BOARD**

Original signed by

Kirsten Walli  
Board Secretary