



EB-2011-0361  
EB-2011-0376

**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 an order under section 19 of the *Ontario Energy Board Act, 1998* declaring that certain provisions of the Ontario Energy Board's *Transmission System Code* are *ultra vires* the *Ontario Energy Board Act, 1998* and certain other orders.

**AND IN THE MATTER OF** an application by Langley Utilities Contracting Ltd. for a determination as to whether certain services are permitted business activities for an affiliate of a municipally-owned electricity distributor under section 73 of the *Ontario Energy Board Act, 1998*.

**NOTICE OF APPLICATIONS, NOTICE OF COMBINED HEARING  
AND  
PROCEDURAL ORDER NO. 1**

**A. The Goldcorp Application**

On November 4, 2011, Goldcorp Canada Ltd. and Goldcorp Inc. ("Goldcorp") filed an application (the "Goldcorp Application") with the Ontario Energy Board (the "Board") seeking the following:

1. An order under section 19 of the *Ontario Energy Board Act, 1998* (the "Act") declaring that sections 4.1.3, 6.7.6, 6.7.7 and 11.2 of the Board's *Transmission System Code* are *ultra vires* the Act;

2. An order under section 19 of the Act declaring that Goldcorp is not under any legal obligation to pay bypass compensation to Hydro One Networks Inc. (“Hydro One”) and that Hydro One may not demand such compensation from Goldcorp;
3. An interim order, under paragraph 7.1 of Hydro One’s electricity transmission licence and under its implied obligation not to enforce any requirement contrary to the Act, that pending final determination of the Goldcorp Application Hydro One shall work cooperatively with Goldcorp in good faith and with all dispatch to complete all analyses and negotiations and to execute all required agreements, contracts or other instruments required in order to connect and energize Goldcorp’s transmission line in the first quarter of 2012;
4. An order under section 3.06 of the Board’s *Practice Direction on Cost Awards* (the “Practice Direction”) and subsection 30(2) of the Act granting Goldcorp all of its costs of the Goldcorp Application; and
5. Such further and other order as may be required.

Included in the Goldcorp Application is a Notice of Motion in support of the request for interim relief set out in paragraph 3 above.

On November 23, 2011, Goldcorp filed with the Board a letter setting out submissions respecting the issue and legal test in its Application, notice, intervenors and costs.

The Board has assigned file number EB-2011-0361 to the Goldcorp Application. Copies of the Goldcorp Application and Goldcorp’s November 23, 2011 letter are available for inspection at the Board’s office in Toronto at the address noted below, and on the Board’s website at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca).

## **B. The Langley Utilities Application**

On August 2, 2011, Langley Utilities Contracting Ltd. (“Langley Utilities”) filed an application (the “Langley Utilities Application”) with the Board under Rule 34 of the Board’s *Rules of Practice and Procedure* (the “Rules of Practice”) seeking a hearing before the Board to determine whether the services contemplated under City of Brampton contract No. 2008-079 (the “Brampton Contract”) are permitted business

activities for an affiliate of a municipally-owned electricity distributor under section 73 of the Act. The services at issue under the Brampton Contract are the performance of routine and emergency maintenance for street lighting and related devices. The affiliate at issue in relation to the Brampton Contract is Enersource Hydro Mississauga Services Inc., an affiliate of Enersource Hydro Mississauga Inc., an electricity distributor licensed by the Board. The Brampton Contract is also the subject of a civil proceeding in the Superior Court of Justice at Brampton (Court file number CV-10-3476-00), which has been stayed by agreement between the parties pending a decision by the Board in the Langley Utilities Application.

The Board has assigned file number EB-2011-0376 to the Langley Utilities Application. Copies of the Langley Utilities Application are available for inspection at the Board's office in Toronto at the address noted below, and on the Board's website at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca).

### **C. Combined Hearing on Common Threshold Questions**

As noted above, the Goldcorp Application seeks orders under section 19 of the Act. The Board has determined that, before deciding whether or not it will hear the matters raised by the Goldcorp Application, it will proceed to hear argument on the following threshold questions:

- A1 Does section 19 of the Act, in and of itself, provide a statutory basis for Goldcorp's Application?
- A2 If section 19 of the Act does not provide a statutory basis on which Goldcorp may bring its Application, should the Board nonetheless proceed, on its own motion, to hear and determine the matters raised by the Goldcorp Application under section 19(4) of the Act?

As noted above, the Langley Utilities Application is made pursuant to Rule 34 ("Format of Hearings and Notice") of the Rules of Practice. No provision of the Act has been cited as the statutory basis for the Langley Utilities Application. The Board has determined that, before deciding whether or not it will hear the matters raised by the Langley Utilities Application, it will proceed to hear argument on the following threshold questions:

- B1 Is there a statutory basis for the Langley Utilities Application under the Act?
- B2 If the Act does not provide a statutory basis on which Langley may bring its Application, should the Board nonetheless proceed, on its own motion, to hear and determine the matter raised by the Langley Utilities Application under section 19(4) of the Act?

Both Applications seek in some degree declarations from the Board. The Board wishes to ensure that, before it proceeds, the basis for hearing the merits is established.

Given the commonality of threshold questions A1 and B1 above arising in respect of the Goldcorp Application and the Langley Utilities Application, the Board considers it appropriate to hear argument on them together. The Board also considers it appropriate to hear, at the same time, submissions on the principles and considerations that are relevant to the exercise of the Board's discretion under section 19(4) of the Act, in relation to threshold questions A2 and B2. The Board will therefore conduct a combined hearing in relation to threshold questions A1 and B1 and the principles and considerations relevant to threshold questions A2 and B2 in accordance with section 9.1 of the *Statutory Powers Procedure Act* and section 21(5) of the Act.

#### **D. Hearing on Motion for Interim Relief**

The Board has also determined that it would be expedient to hear Goldcorp's Motion for interim relief immediately following the hearing on the threshold questions referred to in section C above, although any determination on that Motion may be subject to the Board's determination on threshold questions A1 and A2.

#### **E. Intervenor**

The Board will vary its customary intervention process and will grant intervenor status to all those who have requested it to date.

Hydro One, School Energy Coalition ("SEC") and the Consumers Council of Canada ("CCC") have requested and are granted intervenor status in respect of the Goldcorp Application. The Board will also adopt Lac Seul First Nation ("LSFN") as an intervenor in respect of the Goldcorp Application. LSFN was an intervenor in the leave to

construct proceeding (EB-2011-0106) pertaining to the construction by Goldcorp of the transmission facilities that are also at issue in the Goldcorp Application.

By letter dated August 17, 2011, Powerline Plus Ltd. ("Powerline") requested that it be heard in relation to a matter that raises the same issue regarding section 73 of the Act as that raised by the Langley Utilities Application. The Board will grant intervenor status to Powerline in respect of the Langley Utilities Application. The Board will also adopt Enersource Hydro Mississauga Services Inc. and the City of Brampton as intervenors in respect of the Langley Utilities Application.

Appendix A to this Notice and Procedural Order sets out contact information for the parties to the Goldcorp Application. Appendix B to this Notice and Procedural Order sets out contact information for the parties to the Langley Utilities Application. For clarity, the Board confirms that the parties identified in Appendix A and in Appendix B are parties for the purposes of the combined hearing on the threshold questions referred to in section C above. The Board also confirms that the parties identified in Appendix A are parties for the purposes of the hearing on Goldcorp's Motion for interim relief referred to in section D above. The Board does not expect the parties identified in Appendix B to participate in the hearing on Goldcorp's Motion for interim relief.

Each person identified under the heading "Intervenors" in Appendix A or Appendix B is requested to file a letter with the Board as soon as possible indicating whether the person intends to participate in the combined hearing on the threshold questions and/or the hearing on Goldcorp's Motion for interim relief, as applicable. A copy of the letter should be served on all other parties identified in Appendix A and Appendix B.

Any person that is not automatically adopted as an intervenor by the Board in this proceeding and that wishes to participate as an intervenor or observer must notify the Board Secretary's office in writing immediately, and serve a copy of the intervention request on Goldcorp and Langley Utilities.

In the event that the Board proceeds to a hearing on the merits in relation to the Goldcorp Application (paragraphs 1 and 2 in section A above), the Board expects that it will do so only on giving notice of the Goldcorp Application to all licensed electricity transmitters and to such other persons as the Board considers appropriate.

In the event that the Board proceeds to a hearing on the merits in relation to the Langley Utilities Application (section B above), the Board expects it will do so only on giving notice of the Langley Utilities Application to services affiliates of municipally-owned electricity distributors (directly or through their affiliated licensed electricity distributor) and to such other persons as the Board considers appropriate.

## **F. Cost Awards**

The Board will make cost awards available to eligible intervenors in respect of the Goldcorp Application and the Langley Utilities Application, including the combined hearing on the threshold questions referred to in section C above and the hearing on Goldcorp's Motion for interim relief referred to in section D above.

SEC and CCC have requested an award of costs in respect of the Goldcorp Application. LSFN was determined to be eligible for an award of costs in the Goldcorp leave to construct proceeding referred to above. Based on the criteria set out in section 3.03 of the Practice Direction, the Board has determined that SEC, CCC and LSFN are eligible to apply for a cost award in relation to their participation in the combined hearing and the hearing on Goldcorp's Motion for interim relief.

In the case of applications, cost awards are typically recovered from the applicant and, as set out in section 3.05 of the Practice Direction, applicants as a general rule are not eligible for an award of costs. In its Application, however, Goldcorp has requested that it be granted its costs in relation to its Application. In its letter of November 23, 2011, Goldcorp noted that it will seek an award of costs if it is successful in its Application, as well as an order that Goldcorp is not responsible for the costs incurred by either intervenors or the Board. Goldcorp relies on section 3.06 of the Practice Direction, which states that a party that falls within a category listed in section 3.05 may be eligible for a cost award if it is a customer of the applicant. Neither the Goldcorp Application nor Goldcorp's November 23, 2011 letter specifically identifies from whom Goldcorp proposes that costs be recovered.

With respect to costs in relation to the combined hearing on the threshold questions and the hearing on Goldcorp's Motion for interim relief, the Board will hear submissions on Goldcorp's request that it be granted its costs, as well as on the question of the person(s) from whom cost awards should be recovered in the event that the Board were to rule in Goldcorp's favour in relation to the cost awards issue. The Board will also

hear submissions from Langley Utilities and any other parties identified in Appendix B on the issue of cost awards in relation to their participation in the combined hearing on the threshold questions.

In the event that the Board proceeds to a hearing on the merits in relation to the Goldcorp Application (paragraphs 1 and 2 in section A above) or the Langley Utilities Application (section B above), the Board will address the issue of cost awards on a going-forward basis at that time, and may for that purpose solicit further submissions from the parties to the respective proceedings.

The Board considers it necessary to make provision for the following procedural matters related to this proceeding. Further procedural orders may be issued from time to time.

**THE BOARD ORDERS THAT:**

*Hearing on Threshold Questions and Cost Awards*

1. The Board will hear submissions on the threshold questions identified in section C of this Notice and Procedural Order and on the cost awards issues identified in section F of this Notice and Procedural Order at an oral hearing to be held on **December 19, 2011**. The hearing will commence at **9:30 a.m.** in the Board's North Hearing Room at 2300 Yonge Street, Toronto, Ontario on the 25<sup>th</sup> Floor.
2. Goldcorp and Langley Utilities shall file a summary of their respective submissions on the threshold questions and on the cost awards issues, and deliver a copy to all other parties identified in Appendix A and Appendix B and to any new parties that the Board may accept, by **December 5, 2011**. Any other party identified in Appendix A or Appendix B or Board staff that intends to make submissions at the oral hearing on the threshold questions or the cost awards issues shall file a summary of their submissions with the Board, and deliver a copy to all other parties identified in Appendix A and Appendix B and to any new parties that the Board may accept, by **December 15, 2011**.

*Hearing on Motion for Interim Relief*

3. Immediately following the oral hearing on the threshold questions and the cost awards issues, the Board will hear Goldcorp's Motion for interim relief identified in section D of this Notice and Procedural Order.
4. Hydro One Networks Inc. may file evidence in relation to the Motion for interim relief by **December 5, 2011**.

*Filings to the Board*

5. All filings to the Board in respect of this proceeding must quote file numbers EB-2011-0361/EB-2011-0376, be made through the Board's web portal at [www.errr.ontarioenergyboard.ca](http://www.errr.ontarioenergyboard.ca), and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca). If the web portal is not available you may email your document to [BoardSec@ontarioenergyboard.ca](mailto:BoardSec@ontarioenergyboard.ca). Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file seven paper copies. If you have submitted through the Board's web portal an email is not required. All communications should be directed to the attention of the Board Secretary at the address below, and be received **no later than 4:45 p.m.** on the required date:

**Address**

**Ontario Energy Board**  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto, ON M4P 1E4  
Attention: Board Secretary

Filings: [www.errr.ontarioenergyboard.ca](http://www.errr.ontarioenergyboard.ca)  
E-mail: [Boardsec@ontarioenergyboard.ca](mailto:Boardsec@ontarioenergyboard.ca)  
Tel: 1-888-632-6273 (toll free)  
Fax: 416-440-7656



All filings to the Board in relation to this proceeding will be available for viewing at the Board's offices and will be placed on the Board's website. If the filing is from a private citizen (i.e., not a lawyer representing a client, not a consultant representing a client or organization, not an individual in an organization that represents the interests of consumers or other groups, and not an individual from a regulated entity), before making the filing available for viewing at the Board's offices or placing the filing on the Board's website, the Board will remove any personal (i.e., not business) contact information from the filing (i.e., the address, fax number, phone number, and e-mail address of the individual). However, the name of the individual and the content of the filing will be available for viewing at the Board's offices and will be placed on the Board's website.

**DATED** at Toronto, November 25, 2011

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

**APPENDIX A**

**to**

**Notice of Applications, Notice of Combined Hearing and Procedural Order No. 1**

**EB-2011-0361/EB-2011-0376**

**November 25, 2011**

**Applicant and List of Intervenors in Respect of the Goldcorp Application**

*(see attached document)*

**Goldcorp - Red Lake Gold Mines**

**APPLICANT & LIST OF INTERVENORS**

November 25, 2011

**APPLICANT**

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**Goldcorp - Red Lake Gold Mines**

**APPLICANT & LIST OF INTERVENORS**

November 25, 2011

**INTERVENORS**

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**Goldcorp - Red Lake Gold Mines**

**APPLICANT & LIST OF INTERVENORS**

**November 25, 2011**

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**APPENDIX B**

to

**Notice of Applications, Notice of Combined Hearing and Procedural Order No. 1**

**EB-2011-0361/EB-2011-0376**

**November 25, 2011**

**Applicant and List of Intervenors in Respect of the Langley Utilities Application**

*(see attached document)*

**Langley Utilities Contracting Ltd.**

**APPLICANT & LIST OF INTERVENORS**

November 25, 2011

**APPLICANT**

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**Langley Utilities Contracting Ltd.**

**APPLICANT & LIST OF INTERVENORS**

**November 25, 2011**

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of Brampton**

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