



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 *Transmission System Code* are *ultra vires* the Ontario Energy Board's powers to enact under 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.

BEFORE: Paul Sommerville
Presiding Member

Cathy Spoel
Member

Ken Quesnelle
Member

DECISION AND ORDER ON COST AWARDS
June 25, 2012

On November 25, 2011, the Board issued a Notice of Applications, Notice of Combined Hearing and Procedural Order No. 1 (“Notice and PO”) giving notice of a combined hearing to consider certain threshold questions and cost awards issues arising from two applications; one filed by Goldcorp Canada Ltd. and Goldcorp Inc. (“Goldcorp”) in relation to certain provisions contained in the Board’s Transmission System Code (EB-2011-0361) (the “Goldcorp Application”), and another filed by Langley Utilities Contracting Ltd. (“Langley Utilities”) in relation to section 73 of the *Ontario Energy Board Act, 1998* (EB-2011-0376) (the “Langley Utilities Application”). The history of the combined hearing, including details of the Goldcorp Application and the Langley Utilities Application, is described in detail the Board’s January 23, 2012 Decision and Order with Reasons issued in relation to the combined hearing and will not be repeated here except to the extent relevant to the issue of cost awards.

In the Notice and PO, the Board indicated that cost awards would be made available to eligible intervenors in respect of each of the Goldcorp Application and the Langley Utilities Application, including in relation to the combined hearing. The Board further determined at that time that the Consumers Council of Canada (“CCC”), the School Energy Coalition (SEC”) and Lac Seul First Nation (“LSFN”) are eligible to apply for an award of costs in relation to their participation in the combined hearing. CCC and SEC had each requested intervenor status in relation to the Goldcorp Application, and both participated in the combined hearing. LSFN, a party to an earlier leave to construct proceeding involving Goldcorp (EB-2011-0106), was accepted by the Board as an intervenor in relation to the Goldcorp Application on an anticipatory basis and was granted cost award eligibility, but did not participate in the combined proceeding. Subsequently, the Board also granted cost award eligibility to the Association of Major Power Consumers in Ontario (“AMPCO”) in respect of the Goldcorp Application. AMPCO also participated in the combined hearing. No party requested cost award eligibility in relation to the Langley Utilities Application.

On January 23, 2012, the Board issued its Decision with Reasons and Order (the “January D&O”) in the relation to the combined hearing. In the January D&O, the Board determined that cost awards will be paid by Goldcorp in relation to eligible intervenors in respect of the Goldcorp Application (CCC, SEC, LSFN and AMPCO having been found eligible in this regard). No party having asked for costs in relation to the Langley Utilities Application, none were awarded.

The Board also determined that the Board's costs in relation to the combined hearing will be apportioned equally between the Goldcorp Application and the Langley Utilities Application, and that the Goldcorp Application share of the Board's costs will be paid by Goldcorp. As for the Langley Utilities Application share of the Board costs, the Board determined that the recovery of those costs shall be determined as part of a future hearing on the merits of the Langley Utilities Application. The remainder of this Decision and Order on Cost Awards therefore deals solely with cost awards in relation to the combined proceeding as it pertains to the Goldcorp Application.

The January D&O made provision for the filing of cost claims, objections and responses to objections. Cost claims were received from CCC and SEC by the deadline established for that purpose in the January D&O. No objections to those cost claims were received from Goldcorp. No cost claim was filed by AMPCO.

On February 16, 2012, Goldcorp filed a Notice of Appeal with the Divisional Court from the January D&O. Among other things, the appeal pertained to the Board's determination to require Goldcorp to pay costs. The appeal was heard by the Divisional Court on May 24, 2012. The Court reserved judgment at that time.

On May 25, 2012, CCC filed a letter with the Board requesting that the Board issue a cost order in this matter. On May 28, 2012, Goldcorp filed a letter with the Board requesting that the Board not issue any order until the judgment of the Divisional Court is released and considered. On May 30, 2012, CCC sent a letter to Goldcorp reiterating its request that the Board issue a cost order. On the same day, Goldcorp sent a letter to CCC in reply, indicating that if Goldcorp's appeal is unsuccessful, Goldcorp will pay CCC's costs expeditiously.

On June 5, 2012, the Divisional Court issued its Endorsement dismissing Goldcorp's appeal. The period for seeking leave to appeal the decision of the Divisional Court has now expired.

Board Findings

CCC submitted a cost claim for \$26,718.18 and SEC submitted a cost claim for \$18,366.00.

The Board notes that CCC's cost claim includes disbursements for courier charges for which no receipt has been provided. The Board has therefore adjusted CCC's cost claim by removing the subject charges (\$19.67 plus HST). The cost claim as adjusted is \$26,695.97.

Subject to this adjustment, the Board finds that the SEC and CCC cost claims are reasonable, and that SEC and CCC are entitled to 100% of their respective reasonably incurred costs of participating in this proceeding.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Goldcorp shall immediately make payment as follows:
 - to the Consumers Council of Canada \$26,695.97; and
 - to the School Energy Coalition \$18,366.00.
2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Goldcorp shall pay its share of the Board's costs of, and incidental to, this proceeding immediately upon receipt of the Board's invoice.

DATED at Toronto, June 25, 2012.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary