

July 30, 2012

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Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2701
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms Walli:

Re: EB-2012-0031

We are counsel to the Consumers Council of Canada (“CCC”) in this matter. What follows are our submissions on the Issues List in this proceeding.

Our submission is limited to a response to the request, by Goldcorp Canada Ltd. and Goldcorp Inc. (collectively “Goldcorp”) in a letter of July 23, 2012, to add the following to the draft issues list:

9.2 Should the Board establish an interim rate for Goldcorp in order to recover any by-pass compensation due in an appropriate amount over the remaining life of the Red Lake Transformer Station (RLTS)?

The CCC agrees with the observations of Board Staff in its Submission dated July 27, 2012. The question of by-pass compensation which Goldcorp is required to pay to Hydro One Networks Inc. should not, for the reasons set out the Board Staff Submission, be on the Issues List in this proceeding.

There are three points which the CCC submits require particular emphasis.

As Board Staff points out, it is not entirely clear, from Goldcorp’s letter of July 23, 2012, what relief Goldcorp seeks in this proceeding. The CCC submits that that apparent uncertainty disguises the reality that what Goldcorp seeks is the relief it could not obtain, in its earlier application to the Board, namely an order that it is not required to pay by-pass compensation to Hydro One Networks Inc. The CCC fears that Goldcorp is, once again, trying to do indirectly what it failed to do directly in its application for leave to construct.

The second point relates to what may be described as the integrity of the Board’s decision-making process. In its Decision with Reasons and Order, dated January 23, 2012, the Board

posited three alternatives by which Goldcorp could seek relief with respect to the by-pass compensation issue. The Divisional Court, in its Endorsement, reiterated that those three options remained open to Goldcorp. The CCC submits that it is incumbent on Goldcorp to elect one of those three options, and not seek to add, as it does here, a fourth option.

The third point relates to Goldcorp's submission with respect to the provision in the February, 2012 Connection and Cost Recovery Agreement (CCRA) between Hydro One and Goldcorp. That provision reads as follows:

The Customer shall pay bypass compensation in accordance with the methodology set out in Section 6.7 of the Transmission System Code unless a final order of the OEB or a court of competent jurisdiction states that the Customer shall not be required to pay the said bypass compensation.

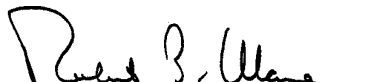
Goldcorp submits that, by adding its proposed issue to the Issues List, the Board will "be able to provide a final order that would satisfy the terms of Goldcorp's CCRA with Hydro One".

The CCC was a party to Goldcorp's Divisional Court appeal. In that proceeding, Goldcorp advised the Court that it had added that provision to the CCRA for the purpose of demonstrating that it would be bound by the ultimate determination in that appeal and that it would pay by-pass compensation should its appeal fail. At no point did Goldcorp assert that that provision contemplated yet another Board proceeding in which the issue of by-pass compensation would be considered. With great respect, we submit that Goldcorp's characterization of the significance of that provision, in its July 23, 2012 letter, is misleading. The "final order" referred to in the CCRA is the Endorsement of the Divisional Court.

We apologize for the delay in delivering this submission.

Yours very truly,

WeirFoulds LLP


Robert B. Warren

RBW/dh

cc: All Parties

cc: Gardiner Roberts LLP, Attention: Ian Blue

cc: Julie Girvan

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