

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B (the "Act");

AND IN THE MATTER OF an Application by Goldcorp Inc. ("Goldcorp") for an Order under section 36 of the Act directed at Union Gas Limited ("Union") regarding the quantum of an aid to construct payable by Goldcorp to Union for a gas pipeline that was the subject of EB-2011-0040.

GOLDCORP'S REPLY SUBMISSION

December 19, 2014

In accordance with Procedural Order #2 in this proceeding, this is the reply submission of Goldcorp.

Goldcorp agrees with the background information as set out in Board staff's submission dated December 12, 2014, and commends Board staff for providing a thorough summary of the proceeding. Accordingly, Goldcorp will not repeat the background information regarding this application in this reply submission.

Goldcorp agrees with Board staff's submission that "the Board's review of the Crown's duty to consult and aboriginal consultation questions were issues of broad public interest."¹ Goldcorp wishes to expand on that particular submission.

The Grand Council of Treaty 3, Lac Seul First Nation and Wabauskang First Nation (collectively the "Late Intervenors") raised issues in Union's leave to construct proceeding pertaining to procedural and jurisdictional matters related to Aboriginal consultation. Goldcorp submits that those types of issues are of the same nature as those addressed by the Board's *Environmental Guidelines for Hydrocarbon Pipelines and Facilities in Ontario* (the "Environmental Guidelines"). The Environmental Guidelines apply to all Section 90 leave to construct applications, and are therefore "generic" or of "broad public interest" as described by Board staff. Accordingly, Goldcorp submits that the procedural and jurisdictional matters raised by the Late Intervenors were "generic" or

¹ Board Staff Submission, December 12, 2014, page 8.

of "broad public interest". Further support for this assertion is that none of the issues raised by the Late Intervenors addressed concerns about impacts arising from the gas pipeline facilities at issue, as described by the Board in its leave to construct Decision:

"Union formally notified the First Nations about the project in October 2010. It later provided the Environmental Report and sought comments. Union made several attempts to follow-up with these requests for comments. **To date, none of the First Nations appear to have identified to Union any specific concerns with respect to impacts arising from the Pipeline Project itself** (although WFN apparently did contact Union with respect to general concerns regarding a lack of Crown consultation with respect to the Project)." ² [emphasis added]

Clearly, when an intervenor raises an issue in a facilities proceeding without identifying specific concerns about the impacts arising from the facilities, that issue is appropriately identified as a "generic" or "broad public interest" issue. That unique circumstance is exactly what occurred in the case of the Late Intervenors.

Goldcorp does not object to "generic" or "broad public interest" issues, such as the procedural and jurisdictional issues raised by the Late Intervenors being addressed in the context of a facilities application. However, Goldcorp submits that the costs (both direct and indirect)³ of addressing such issues should not be borne by an individual customer. To burden an individual customer with the costs of such issues would be unfair. As the Board stated in its decision in Union's leave to construct proceeding:

"The Board is a quasi-judicial tribunal that owes a duty of fairness to all parties."⁴

The reasons why it would be unfair for Goldcorp to bear the cost responsibility for the delay (i.e. the indirect cost associated with the procedural and jurisdictional review) are as follows:

- i. all of Union's customers will benefit from the Board's review of the issues raised by the Late Intervenors; and
- ii. the delay cost of \$2,375,000 is significant and material to Goldcorp.

² Decision in EB-2011-0040, page 30.

³ Goldcorp submits that the Delay Costs are indirect costs.

⁴ Decision in EB-2011-0040, page 8.

As a consumer, Goldcorp respectfully requests that the Board be guided by the OEB Act's subsection 2(2) objective by protecting Goldcorp's interests in regard to the price it is required to pay for the gas pipeline facilities at issue.

All of which is respectfully submitted.

December 19, 2014

Goldcorp Inc.

A handwritten signature in black ink, appearing to read "Andrew Taylor", written over a horizontal line.

By its Counsel: Andrew Taylor
The Energy Boutique