



Fogler, Rubinoff LLP
Lawyers

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
t: 416.864.9700 | f: 416.941.8852
foglers.com

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Reply To: Thomas Brett
Direct Dial: 416.941.8861
E-mail: tbrett@foglers.com
Our File No. 131167

VIA RESS, EMAIL AND COURIER

Ontario Energy Board
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Attention: Kirsten Walli,
Board Secretary

Dear Ms. Walli:

Re: Sagatay Transmission LP - Notice of Appeal dated June 9, 2017 under Section 7 of the Ontario Energy Board Act from the Order of the Registrar dated May 25, 2017 dismissing Sagatay's Application for Leave to Construct a Transmission Line in EB-2016-0017; Board File No. EB-2017-0258

We write in response to the Ontario Energy Board's Notice of Hearing and Procedural Order No. 1 dated September 1, 2017.¹ As directed, we request that the Sagatay be permitted to file affidavit evidence in this appeal on the following issues:

1. the corridor from Dinorwic to Pickle Lake (the "Dinorwic Route") that Wataynikaneyap Power LP ("Watay") identifies in its most recent draft Environmental Assessment Report issued June 2017 as the "preferred undertaking" for developing and constructing the "Line to Pickle Lake" or Phase 1;
2. Watay's "Corridor Alternatives" for Phase 1;
3. whether the Dinorwic Route and Corridor Alternatives will traverse through the traditional, ancestral and reserve lands of the Mishkeegogamang First Nation and Ojibway of Saugeen First Nation (the "First Nations");

¹ Capitalized terms that we do not define in this response will have the meanings given to them in Sagatay's Notice of Appeal dated June 9, 2017.

4. the Aboriginal and treaty rights that will be affected by the Dinorwic Route and Corridor Alternatives;
5. the seriousness of the potential impact of the Dinorwic Route and Corridor Alternatives on the such Aboriginal and treaty rights; and
6. whether there has been adequate consultation of the First Nations.

Sagatay submits that evidence on these issues is necessary for a fair hearing of this appeal. We note that the Registrar dismissed Sagatay's Application under section 97.1(1) of the Act (namely, a licence was issued to Watay that includes an obligation to develop and construct a line "that is the subject of the application") on the basis that the Watay line was "functionally equivalent" to the line proposed by Sagatay. This ruling cannot be fairly assessed by the Board in the absence of evidence on the particulars of the lines proposed by Watay, including its preferred undertaking.

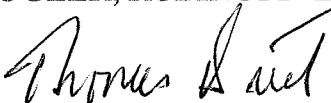
Sagatay has made submissions in this appeal on why Watay's proposed line is not the "subject of [Sagatay's] application" and how the two lines are not of equal value to the First Nations "whose historical lands would be adversely impacted" (para 32) or "to preserve the habitat of the endangered Woodland Caribou on the Mishkeegogamang First Nation and Ojibway Nation of the Saugeen traditional lands" (para 34). To fairly assess this argument, it is necessary for the Board to consider evidence on (a) whether and to what extent the line proposed by Watay will traverse the traditional lands of the First Nations, (b) and whether and to what extent the construction of these lines will adversely impact on the Aboriginal and treaty rights of the First Nations.

Finally, it is submitted that evidence of the adequacy of the consultation of the First Nations' in respect of Watay's proposed line is also necessary for the fair hearing of this appeal as we submit that the Crown's duty to consult the First Nations has been triggered by (among other things) the Board's approval process under the Act and, in particular, the Registrar's decision to dismiss Sagatay's Application and this appeal. [Clyde River, para 27]

We would be pleased to address any questions or comments the Board may have.

Yours truly,

FOGLER, RUBINOFF LLP



Thomas Brett

TB/dd

cc: All Parties (*via email*)