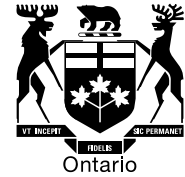


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BY E-MAIL

November 8, 2018

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
BoardSec@oeb.ca

Dear Ms. Walli:

**Re: OEB Staff Submission
IAMGOLD Corporation
Application for Leave to Construct Transmission Facilities in the District of
Sudbury, Ontario
OEB File No. EB-2018-0191**

Please find attached OEB staff's submission in the above referenced matter.

Yours truly,

Original signed by

Ritchie Murray
Project Advisor

Cc (by email):
Steven Bowles, StevenBowles@iamgold.com
Scott Stoll, sstoll@airdberlis.com

Introduction

IAMGOLD Corporation (IAMGOLD) is proposing to construct approximately 44 kilometres of 115 kilovolt electricity transmission line from the Hydro One Network Inc. (HONI) transmission system at Shining Tree Junction to the Côté Gold Mine (Mine) located approximately 20 km southwest of Gogama, Ontario (the Project). IAMGOLD is the majority owner of the Mine. IAMGOLD says that the Project is needed to supply the Mine with power.

The Project consists of:

- 44 km of 115 kV transmission line
- Connection facilities at HONI's Shining Tree Junction
- Facilities at the Mine

Providing power to the mine also requires re-conductoring of approximately 118 km of 115 kV T2R circuit belonging to HONI. HONI will submit a separate application requesting leave to construct this refurbishment work.

IAMGOLD is seeking the following orders under sections 92, 97 and 101 of the *Ontario Energy Board Act* (OEB Act), respectively:

- a) Leave to construct the Project
- b) Approval of the proposed form of easement agreement
- c) Authority to construct works upon, over or under a highway, utility line or ditch

IAMGOLD filed its application on July 11, 2018. Notice was issued on September 7, 2018. Each of Independent Electricity System Operator (IESO) and Mattagami First Nation applied for intervenor status and were approved by the OEB. Procedural Order No. 1 was issued on October 4, 2018. Interrogatory responses were filed on October 29, 2018.

Letters of support for the Project were filed with the OEB by the Corporation of the City of Timmons, the Mayor of Greater Sudbury, and the MPPs of the provincial electoral districts of Algoma Manitoulin, Nickel Belt, Sudbury and Timmins.

IAMGold requested a written hearing and a decision no later than December 31, 2018. Construction is scheduled for summer 2019 in order to meet the Mine's operational date in the first quarter of 2021.

OEB staff submits that the OEB should grant leave to construct the project.

OEB's Jurisdiction in Section 92 Applications

Section 92 of the OEB Act requires leave of the OEB for the construction, expansion or reinforcement of electricity transmission lines. In considering whether to grant leave, the OEB is restricted to the criteria set out in section 96(2) of the Act:

In an application under section 92, the Board shall only consider the following when, under subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line or electricity distribution line, or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.
2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources.

In a 2012 leave to construct application, the OEB explained how section 96(2) limits its review of leave to construct applications focusing specifically on Aboriginal consultation:

...the Board has no jurisdiction to conduct Aboriginal consultation itself, nor to assess the adequacy of the Crown's consultation efforts in a section 92 application (except as they may arise within the limits of section 96(2)). Aboriginal consultation is a matter of Constitutional law. Although section 19 of the Act confers a general power to consider issues of law, section 96(2) of the Act places specific limitations on the extent of the Board's power to review. As the Supreme Court stated in *Rio Tinto*: "[t]he power to decide questions of law implies a power to decide constitutional issues that are properly before it, *absent a clear demonstration that the legislature intended to exclude such jurisdiction from the tribunal's power.*" In enacting section 96(2) of the Act, the Legislature has clearly demonstrated its intention to exclude from the Board's purview any matters other than those directly associated with the interests of consumers with respect to price and the reliability and quality of electricity service, or the promotion of the Government's renewable energy policies. Other issues,

including environmental impacts, have been expressly excluded from the Board's jurisdiction.¹ [emphasis in original]

OEB staff notes that the adequacy of Indigenous consultation is considered as part of the provincial environmental assessment process for a transmission line. While the OEB does not have jurisdiction to determine issues related to the Environmental Assessment (EA) approval, the proposed project requires the successful completion of the EA approval process and the acquisition of any necessary permits.

Given the jurisdiction of the OEB, OEB staff's submission focusses on price, reliability, quality of electricity service, land matters and other matters. OEB staff notes that the promotion of renewable energy sources in a manner consistent with the policies of the Government of Ontario has not been raised as an issue or benefit of this application.

Price

Project Need

The Mine will require approximately 72 MW of power. There are no electricity transmission or distribution facilities near the Mine with sufficient capacity to meet this requirement.²

OEB staff accepts that the project is needed.

Alternatives

IAMGOLD and HONI discussed the possibility of HONI owning the Project, but it was determined that it was in IAMGOLD's interest to retain ownership of the Project.³ The Project is being designed to service the Mine and will not have any significant capacity to serve additional customers.⁴

At one time, IAMGOLD had considered an approximately 160 km long 230 kV line extending from the City of Timmins.⁵ During the environmental assessment process, the

¹ EB-2012-0082, Decision and Order, November 8, 2012, p. 12; see also EB-2009-0120, Decision on Questions of Jurisdiction and Procedural Order No. 4, November 18, 2009, pp. 8-11.

² Exhibit B, Tab 1, Schedule 1, page 3.

³ OEB staff IR #1 b).

⁴ OEB staff IR #1 a).

⁵ Exhibit B, Tab 1, Schedule 9, Attachment 1.

current proposal for the 44 km of new 115 kV line to be constructed by IAMGOLD and the proposed re-conductoring by HONI became the preferred alternative.

OEB staff has no concerns with the proposed facilities.

Economics and Feasibility

IAMGOLD intends to retain ownership of the Project and be an unlicensed transmitter.⁶ The OEB's *Transmission System Code* (TSC) defines an "unlicensed transmitter" as a person who owns or operates a transmission system and that is exempt from the requirement to hold a licence under section 57(b) of the OEB Act by virtue of a regulation made under the OEB Act or of the application of section 84 of the OEB Act.⁷ OEB staff submits that IAMGOLD meets the criteria set out in regulation for an exemption from section 57(b) of the OEB Act.⁸ OEB staff submits that it is appropriate in this case for IAMGOLD to be an unlicensed transmitter because it will be transmitting electricity only for its own consumption⁹.

As an unlicensed transmitter, IAMGOLD will be not rate-regulated by the OEB. IAMGOLD intends to finance 100% of the construction, operation and decommissioning of the proposed Project. IAMGOLD will pay a capital contribution to HONI pursuant to a Customer Connection and Cost Recovery Agreement with HONI, which will be in accordance with the requirements of the OEB's *Transmission System Code*.¹⁰ As such, the Project will have no adverse impact on other ratepayers.

IAMGOLD asserts that additional revenue from the Mine will better utilize the existing transmission infrastructure and thereby have a positive benefit for all other electricity consumers.¹¹ IAMGOLD also quantifies a number of local, provincial and federal economic benefits including (but not limited to) the procurement of goods and services of approximately \$648 million during the construction phase and \$177 million annually during the operations phase of the Project.¹² In OEB staff's view, the regional economic, social and environmental benefits identified fall outside the OEB's scope of review.

⁶ Exhibit B, Tab 1, Schedule 1, page 5.

⁷ *Transmission System Code*, Revised April 30, 2018, section 2.0.66

⁸ *Supra* note 4

⁹ OEB staff IR #1, page 2

¹⁰ Exhibit B, Tab 2, Schedule 3, page 1.

¹¹ Exhibit B, Tab 2, Schedule 3, page 2.

¹² Exhibit B, Tab 2, Schedule 1, page 5.

OEB staff notes however that there is no impact on electricity consumers given that IAMGOLD is not rate regulated and it is not transmitting electricity other than for its own use.

Reliability and Quality of Service

The Project is being designed to service the Mine alone and IAMGOLD states that because the Project is critical to the operation of the Mine, it is in their interest to ensure the line is properly constructed, operated and maintained. IAMGOLD has engaged industry experts such as AMEC Foster Wheeler and Wood PLC to provide engineering and technical advisory services, and IAMGOLD will engage qualified construction companies to complete the construction and installation of the transmission line.¹³ Operation and maintenance of the line will be performed either by third party experts specializing in that type of service, or by IAMGOLD's existing staff supported by experienced professionals recruited as needed.¹⁴

The IESO concluded in its Final System Impact Assessment that "the proposed connection of the project... is expected to have no material adverse impact on the reliability of the integrated power system."¹⁵

Hydro One concluded in its Final Customer Impact Assessment that the "Hydro One system and customers will not be adversely impacted by the connection of the Côte Lake Mine."¹⁶

OEB staff submits that IAMGOLD has established that the Project will have no negative impacts on the reliability and quality of service experienced by other electricity consumers.

Land Matters

OEB staff has no concerns with respect to IAMGOLD's proposed land use or its proposed form of land use agreements.

The Project is located in the District of Sudbury, between the proposed Mine in the geographic townships of Chester and Yeo, and the existing HONI Shining Tree Junction

¹³ Exhibit B, Tab 2, Schedule 2.

¹⁴ OEB staff IR #2 c).

¹⁵ Exhibit B, Tab 2, Schedule 3, page 1.

¹⁶ Hydro One's Customer Impact Assessment for the IAMGOLD Cote Lake Mine Connection, page 5. Filed with the OEB on September 27, 2018.

in the geographic township of Garibaldi. The project traverses the geographic townships of Garibaldi, Miramichi, Londonderry, Champagne, Benneweis and Chester.

The Project is to be constructed almost exclusively in an existing, but abandoned, right-of-way from HONI's existing Shining Tree JCT to the proposed Mine. A small segment of the transmission line west of Highway 144, entering the Mine, will be in a new corridor. The proposed route will not share any routing or the corridor with any other facilities except possibly a short segment very near Highway 144 where there is an existing Hydro One distribution line.

The proposed route for the Project will cross roads, including Highway 144, and an existing CNR railway. Rail and road negotiations have not occurred yet, and are likely to occur in the early part of 2019.¹⁷

No third party private landowners are impacted aside from the railway company, and no independent claim holders will be impacted.¹⁸ Although it is not anticipated that there will be a need for easement agreements with private landowners, IAMGOLD has filed the form of land use agreement it would offer to any private landowner should the need arise. OEB staff has reviewed the form of land use agreement relative to the requirements set out in Appendix A: Draft Form of Lease or Easement Agreement of the OEB's *Filing Requirements for Electricity Transmission Applications, Chapter 4 Applications under Section 92 of the Ontario Energy Board Act, July 31, 2014*. OEB staff submits that the proposed form of land use agreement conforms to the OEB's requirements and should therefore be approved by the OEB for use by IAMGOLD.

A land use permit will be required from the Ministry of Natural Resources (MNR) and Forestry for areas where the Project crosses Crown Land. IAMGOLD has not initiated the formal land use permit process, however IAMGOLD has had preliminary conversations with MNR and will continue to work with MNR regarding approval requirements of all parts of the transmission line.¹⁹

Environmental Matters

As noted above, the OEB does not have authority to review or approve environmental issues related to electricity transmission as part of its mandate. The Minister of

¹⁷ OEB staff IR #3 b).

¹⁸ OEB staff IR #3 a).

¹⁹ OEB staff IR #3 c).

Environment, Conservation and Parks (MECP)²⁰ granted approval of the Côté Gold Project Environmental Assessment (EA) on December 22, 2016.²¹

Through interrogatories, Mattagami First Nation asked IAMGOLD to produce the following documents relating to the EA.²²

- Decision Statement Issued under Section 54 of the *Canadian Environmental Assessment Act*, 2012, SC 2012, c 19, s 52
- Order in Council 238/2017 – *Environmental Assessment Act* Section 9 Notice of Approval to Proceed with the Undertaking
- Section 7.3.15 Power Supply and Routing of the Côté Gold Project EIS / Draft Environmental Assessment Report May 2014
- Section 3.0 Alternatives to the Undertaking of *Environmental Study Report (Draft)* IAMGOLD Corporation, Côté Gold Division, September 2018

IAMGOLD provided the requested information, but questioned its relevance given the OEB's jurisdiction. OEB staff submits that the EA documents are not relevant to this proceeding, given that environmental issues are beyond the scope of the OEB's jurisdiction.

Other Matters

Indigenous Consultation and Duty to Consult

On December 22, 2016, the MECP granted approval of the Côté Gold Project EA.²³ The EA included indigenous consultation.

As noted above, the OEB has determined that it does not have jurisdiction to consider Indigenous Consultation issues in electricity leave to construct applications.²⁴ Notwithstanding previous OEB findings on this issue, IAMGOLD provided information to demonstrate that it has been actively consulting with Indigenous communities on the Mine, including the Project, since 2012.²⁵

²⁰ Formerly the Minister of the Environment and Climate Change.

²¹ <https://www.ontario.ca/page/approval-cote-gold-project-environmental-assessment>

²² Mattagami First Nation IRs #5 and #7.

²³ <https://www.ontario.ca/page/approval-cote-gold-project-environmental-assessment>

²⁴ EB-2009-0120. Yellow Falls Power Limited Partnership. Decision and Order issued December 16, 2009.

²⁵ Exhibit H, Tab 1, Schedule 1

Conclusion

OEB staff submits that the OEB should grant IAMGOLD's request for leave to construct the Project, approve the form of easement agreement, and authorize the construction of the Project upon, over or under a highway, utility line or ditch. OEB staff submits that IAMGOLD has established that the Project will have no negative impacts on the prices, reliability and quality of service experienced by other electricity consumers. OEB staff observes that the form of easement agreement is consistent with the OEB's requirements.

All of which is respectfully submitted.