

Motion by Grant Lake for further and better interrogatory responses

ONTARIO ENERGY BOARD

**BFN Transmission GP Holding Company Inc., on behalf of
1000757443 Ontario LP**

Application for authority to expropriate certain interests in land

NOTICE OF MOTION

By Grant Lake for further and better interrogatory responses

March 18, 2026

Grant Lake makes this motion to the Ontario Energy Board (OEB), to be heard in writing.

THIS MOTION IS FOR further and better responses to the following interrogatories:

1. Grant Lake.1, part d., paragraph (ii). In particular, Grant Lake seeks production of a copy of the limited partnership agreement for the Applicant between Alamos Gold Inc. (Alamos) and Batchewana First Nation (BFN).

1. Grant Lake.2, part d. In particular, Grant Lake seeks production of the transmission services agreement between the Applicant and Alamos, or if that agreement has not been finalized then any term sheet entered into that anticipates that agreement.

1. Grant Lake.6, parts d. and e. In particular, Grant Lake seeks production of communications between the Applicant and Grant Lake related to compensation.

2. Grant Lake.8, part c. In particular, Grant Lake seeks production of agreements entered into by the Applicant for other land rights acquired for the subject transmission line.

THE GROUNDS FOR THE MOTION ARE:

1. Grant Lake.1, part d., paragraph (ii) & 1. Grant Lake.2, part d.

1. It is the position of Grant Lake that the Applicant's project is being undertaken by a private partnership between Alamos and BFN to serve the private commercial interests of Alamos in expanding its gold mining operations and of BFN to participate in such expansion.
2. Grant Lake will argue that the OEB does not have the authority, or in the alternative should not exercise its authority, to grant expropriation authorization for a purely commercial arrangement such as that engaged in by the Applicant's principals. Grant Lake will argue

that there is no “public interest” supporting the requested authorization. Rather the interests served are the private commercial interests of the two partners.

3. In support of this position, interrogatories 1.Grant Lake.1 and 1.Grant Lake.2 sought information regarding the commercial basis for the proposed transmission line, and the commercial arrangements in support thereof between the two investors; Alamos and BFN.
4. The interest of Alamos is clear, and clearly private.
5. In order to understand the commercial interest of BFN in the proposed transmission line – i.e. its financial stake and the commercial arrangements supporting its participation in this venture - Grant Lake sought copies of the agreements reflecting those interests and arrangements. Grant Lake submits that this information is directly relevant to, and probative of, the nature of BFN’s interest in the project, and the extent to which such interest is a purely private, commercial one.
6. To that end, interrogatory **1.Grant Lake.1**, part d., paragraph (ii) requested a copy of the limited partnership agreement for the Applicant. The response provided confirms that there is a limited partnership agreement, but indicates that *“the Applicant is not able to submit a copy of a private agreement among its investors – an agreement to which the Applicant is not a signatory”*. The Applicant went on to elaborate on its refusal as follows (our emphasis):

The investor parties (which are the only parties to the requested limited partnership agreement) are not the subject matter of this Application, and any agreement among those investors is not relevant to this Application.”

7. To assert that the agreement between the two principals for the proposed transmission line – the gold mine to which the transmission line is going to provide exclusive service and the First Nation which has partnered with the gold mine on the project - is not relevant to this Application is disingenuous. The Applicant asserts in its Application that it is the identities and activities of these two parties that constitute the “public interest” which in turn supports the exercise by the OEB of its legislative mandate to grant authority to expropriate. Grant Lake is entitled to test that assertion, and the nature of the interests of the “investor parties”.

8. In particular:

- a. In its Application, the Applicant fully articulates, and relies on, the identity and interests of the investor parties in support of its request that the OEB grant a public interest driven authorization to expropriate.
- b. In its partial response to the interrogatory, the Applicant clearly confirms that Alamos and BFN are the only two investors in the project, which is being undertaken through a limited partnership controlled by both of them. Unlike in the case of an agreement between two parties at arm's length from the Applicant, it is not credible to assert that the agreement could not be produced were the OEB to so direct.
- c. The agreement is *prima facie* relevant to, and probative of, the nature of the interests of the respective parties in the proposed transmission line.

9. Interrogatory **1.Grant Lake.2**, part d., requested a copy the transmission services agreement that the Applicant has confirmed (see response to part c.) will govern the commercial relationship between the parties. The applicant declined to provide the requested agreement on the basis of relevance.

10. However:

- a. Unlike in respect of the partnership agreement sought by interrogatory 1.Grant Lake.1, the transmission services agreement is one to which the Applicant itself is a party.
- b. *Like* in respect of the partnership agreement sought by interrogatory 1.Grant Lake.1, the transmission services agreement is directly relevant to, and probative of, the nature of the interests of the respective parties driving the proposed transmission project. As such, its contents are relevant to, and potentially demonstrative of, Grant Lake's position that those interests are of a purely private and commercial nature and do not support the exercise by the OEB of its jurisdiction to grant the extraordinary, public interest driven remedy of an authorization to expropriate.

11. Grant Lake respectfully submits that if the OEB is going to consider granting an order that, as characterized by the Supreme Court of Canada (SCC), would constitute "a very *significant interference*" with Grant Lake's private property rights¹, it is entitled to material that is relevant to, and probative of, its defence of those rights.

12. That defence includes the right to argue, on a complete record as to the nature of the Applicant as defined by the documented interests of its two sole investor partners, that those

¹ *Dell Holdings Ltd. v. Toronto Area Transit Operating Authority*, as cited by the OEB in EB-2010-0023, Bruce to Milton Expropriation Authority Application, *Decision & Order*, March 15, 2011, page 9, bottom.

interests are of a private, purely commercial nature and do not support the exercise of the OEB's public interest mandate.

13. Grant Lake requests an order that both the limited partnership agreement and the transmission services agreement that the Applicant has confirmed exist be produced. (If the transmission services agreement has not been concluded, then Grant Lake requests that any term sheet which contemplates such agreement be produced.)

1. Grant Lake.6, parts d. and e.

14. These two parts of interrogatory 1. Grant Lake.6 requested that the Applicant:

Part d. Indicate which of the communications listed in Appendix I to its Application – *Timeline of Land Access Agreements, Negotiations, and Related Communications* - related to compensation.

Part e. List any additional communications related to compensation.

The interrogatory further asks for a copy of any such communication which is in writing or reduced to writing or, if oral only, a summary of the discussion including who was involved.

15. The Applicant responded to the effect that Grant Lake, as party to all such communications, already has knowledge, and any documentation, thereof.
16. It is precisely on the basis of its own knowledge that Grant Lake expects that proper response to this interrogatory will show that there was very little communication, and no real negotiation, in respect of compensation.
17. Grant Lake understands that the OEB will not determine compensation in this proceeding.
18. What Grant Lake will ask the OEB to determine is that the lack of any real willingness and effort on the part of the Applicant and its investors to negotiate compensation, which is a central element in any expropriation, demonstrates that the Applicant has not made "*best efforts*" or exercised "*due diligence*" in negotiating a resolution with Grant Lake prior to bringing its application for the extraordinary remedy of the granting of authority to expropriate.

19. The OEB has recognized that “*expropriation is an extraordinary power*”², and has been guided by the SCC finding that the power of an expropriating authority should be strictly construed in favour of those whose land rights have been affected.³
20. This recognition has given rise to the inclusion in the introduction to the Board’s standard *Section 99 Expropriation Issues List*, as adopted in this proceeding⁴, of the express expectation that Applicants “*make best efforts to negotiate an agreement with landowners before resorting to an expropriation application*”.
21. The OEB’s *Filing Requirements for Electricity Transmission Applications* expressly include, in respect of expropriation authorization applications such as this one, the expectation that the Applicant “*must demonstrate due diligence in negotiating settlements with impacted landowners... including a list of issues and explanation(s) of how each issue was resolved or proposed to be resolved*”.⁵
22. The OEB has found in this case that the topic of the efforts of the Applicant to negotiate an agreement with Grant Lake is subsumed within the approved issues list.⁶
23. The onus is on the Applicant to demonstrate “*best efforts*” and “*due diligence*” in this respect. Interrogatory 1. Grant Lake.6, parts d. and e., have asked that the Applicant do that. Should the Applicant fail to do that, the OEB can and should draw the inference that “*best efforts*” and “*due diligence*” were not exercised by the Applicant.
24. Grant Lake requests that the OEB direct the Applicant to respond to this interrogatory.

2. Grant Lake.8, part c.

25. Interrogatory 2. Grant Lake.8, part c., asked for a copy of agreements entered into by the Applicant for other land rights acquired for the subject transmission line. The Applicant

² EB-2010-0023, Bruce to Milton Expropriation Authority Application, *Decision & Order*, March 15, 2011, page 9, bottom. See also EB-2013-0268, Dufferin Wind Power Inc., *Decision and Order*, May 1, 2014, page 4, first full paragraph.

³ *Ibid*, citing *Dell Holdings Ltd. v. Toronto Area Transit Operating Authority*.

⁴ *Decision on Issues List*, February 2, 2026, Schedule A.

⁵ *Filing Requirements for Electricity Transmission Applications*, Chapter 4, page 50, top.

⁶ *Ibid*, page 3.

declined to provide such agreements on the basis that “*only the fact of the existence of the agreements with other landowners is relevant*”.

26. The Applicant relies on an exemption from the requirement to obtain leave to construct. Accordingly, unlike in the normal course, the OEB has not reviewed or approved the terms and conditions upon which the Applicant should be granted rights to use Grant Lake’s land.
27. Such terms and conditions are the subject of review by the OEB when granting leave to construct, for the protection of the interests of the owners of land directly and materially affected by the project for which leave to construct is sought. The fact that the Applicant relies on an exemption from the requirement to obtain leave to construct should not obviate the OEB’s consideration of the interests of the owners of land directly and materially affected by the proposed transmission line project. The OEB should still, and perhaps even more so absent consensual agreement with the affected landowner, consider whether, and if so how, to condition its order should it determine to grant authority to the Applicant to expropriate an interest in Grant Lake’s lands.
28. Accordingly, Grant Lake has asked for discovery of the terms and conditions upon which the Applicant has contracted for the land rights that it has agreed to with other landowners for the project. Grant Lake is entitled to information in respect of those terms and conditions, in order to assess whether its interests merit such terms, or any alternative or additional terms, imposed by way of conditions of approval should the OEB be persuaded to grant to the Applicant the relief which it seeks.
29. The extant agreements between the Applicant and other parties are also relevant to, and potentially probative of, the extent to which the Applicant has been consistent in its dealings as between other land owners and Grant Lake. Such consistency is in turn relevant to, and probative of, the extent to which the Applicant has fulfilled its obligations of fairness⁷ to, and best efforts to negotiate a resolution with, Grant Lake.

⁷ EB-2010-0023, Bruce to Milton Transmission Reinforcement Project, *Issues List Decision*, August 6, 2010, page 13, paragraph 3.1; EB-2006-0352, Toyota Woodstock Transmission Interconnection Project, *Decision and Order*, July 19, 2007, page 16, second last paragraph.

30. We further note that while the Applicant first asserts in its response to this interrogatory that *“[o]nly the fact of the existence of agreements with other landowners is relevant”*, it then goes on to represent, in respect of the substance of those agreements, that *“no landowner is receiving a higher rent or fee (per acre) than the rent that was previously offered to and rejected by the Grant Lake Landowners”*. Grant Lake is entitled to test the veracity of such assertions through examination of the underlying documents in their entirety.
31. Grant Lake requests that the OEB order production of the requested agreements.