

Berlin, Hayley (ENE)

From: Borg, Laurence (ENE)
Sent: October 18, 2006 7:42 AM
To: Berlin, Hayley (ENE); Heeney, Paul (ENE)
Subject: FW: GO

Hayley and Paul,

I reviewed the draft ToR this weekend.

Paul the issue you describe related to the appropriateness of the various alternatives doesn't strike me as being a legal issue. I think that both what you propose below and what is currently in the ToR are both within the ambit of what is approvable by the Minister - simply neither are patently unreasonable.

However, having reviewed the ToR I am somewhat uncomfortable with several aspects of it for the reasons described below.

First, the ToR doesn't present an undertaking, rather it presents two related but distinct "components". As a result we have two separate sets of:

1. proponents (GO as sole proponent and GO/UPAG as co-proponents)
2. alternatives to; and
3. alternative methods

This creates a couple legal problems. In regards to proponenty a proponent is defined as:

"proponent" means a person who,

- (a) carries out or proposes to carry out an undertaking, or
- (b) is the owner or person having charge, management or control of an undertaking;

If either GO or UPAG are not proposing to carry out an undertaking they simply aren't a proponent within the meaning of the Act. Being a Proponent can't be contingent on something that may or may not happen in the future. Either they are a proponent for an undertaking when they submit the ToR or not.

In regards to the alternatives to and alternative methods, two sets of these are not consistent with s. 6(2)(a) as described in the ToR because s. 6.1(2) only anticipates alternatives in respect of an undertaking.

Furthermore, you can't get an EA approval for two undertakings in one EA application.

However, I see two potential solutions (and there may be others):

1) The easy solution would be to describe GO as the sole proponent for both "components" and to describe the ToR as being prepared in accordance with 6(2)(c) of the EAA (not 6(2)(a)). Keep in mind 6(2)(c) does not necessarily mean a focused ToR -- 6(2)(c) can be used when the EA will include more than the requirements set out in 6.1(2) which is arguably the case here. This could leave the identification of the undertaking to the EA.

2) The more difficult approach (but one that I would work out some of the issues that Paul describes below) would be to actually describe one undertaking that

UPAG - operate
 APAG - corridor
 TO - infrastructure
 ID - planning
 ID - select
 what approach needed
 inter-facility
 to
 implementation
 in BT corridor
 what approach needed

captures:

- a) both proponents (as co-proponents)
- b) both components subsumed in the one undertaking (The undertaking could be described more broadly as Transportation service improvements between Union Station and Pearson Airport.)
- c) both sets of alternatives to
- d) both sets of alternative methods

I'd be happy to discuss this with you both further but I'm afraid that I won't be able to until things blow over on Richmond. The entire Branch working under a short deadline imposed by the ADMO.

Laurence

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-----Original Message-----

From: Heeney, Paul (ENE)
 Sent: October 13, 2006 5:13 PM
 To: Borg, Laurence (ENE)
 Cc: Berlin, Hayley (ENE); Dominski, Andy (ENE); Heeney, Paul (ENE)
 Subject: GO

Laurence,

Just wanted to maybe better articulate that line I was talking about. In my mind the EA is to be about the infrastructure associated with this airport pearson link. I agree that as a result of the EA it may be in the end that GO has nothing to do with it. That's not an issue.

My issue lies is the scope of what is being assessed in regards to the a - p link. The ToR contemplates an EA that will, on the a-p link side, assess things like buses, subways, rt and rail. I think where I am at is that the ToR needs to focus the alternatives on different infrastructure, not the type of service itself. The issue of the kind of service has been established by the feds. Why muddy the waters and go down the road of looking at subways and buses?

The alternatives should be upgrade the Georgetown GO line, a new rail line along the QEW and up the 427, a new rail line on alignment X, a new rail line within an existing utility corridor of some kind, etc.

This is where I think the ToR should take the EA. In this way, the Minister is not deciding the type of service. That's where I think the line is. Let the feds wear that.

Hope this maybe better spells out where my problems lie.

 Paul Heeney
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