

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.

APPLICATION

July 4, 2014

1. Goldcorp, the Applicant, is an Ontario company with its head office in Vancouver. Goldcorp carries on the business of, among other things, operating gold mines globally, including in Ontario.
2. Goldcorp has four gold mines in the Municipality of Red Lake, Ontario:
 - the Cochenour Mine;
 - the Campbell Mine;
 - the Red Lake Mine; and
 - the Balmer Mine.
3. As set out below, Goldcorp hereby applies to the Ontario Energy Board pursuant to Section 36 of the Act for the determination of the appropriate quantum for the Contribution in Aid of Construction ("CIAC) for the natural gas pipeline that was the subject of EB-2011-0040 (the "Pipeline").

I. Background- EB-2011-0040

4. Construction of the proposed Pipeline was divided into two phases: Phase 1 would run from an existing gas pipeline north of Ear Falls to the intersection of Highway 105/125, where it would serve various existing mine sites (collectively known as the "Red Lake Gold Mines") operated by Goldcorp. Phase 1 was approximately 58 km in length consisting of 8 inch and 4 inch diameter pipelines. Phase 2 involved constructing

distribution pipelines to provide natural gas service to the residents and businesses of Red Lake, Balmertown, and Cochenour ("Municipality of Red Lake").

5. Union filed an application with the Ontario Energy Board (the "Board") on February 8, 2011 for leave to construct the Pipeline in the Red Lake area (EB-2011-0040). According to Union's application, Phase 1 of the Pipeline was scheduled to be completed in November of 2011, as illustrated by the Gant chart attached at Appendix "A" that was filed by Union in EB-2011-0040.
6. According to Union's application, Goldcorp was expected to use 72% of the Phase 1 capacity while the Municipality of Red Lake was expected to use 28% of the Phase 1 capacity. For Phase 1, Union required a CIAC from Goldcorp of \$18.6 million and a CIAC from the Municipality of Red Lake of \$7.0 million. Goldcorp funded the Municipality of Red Lake's share until funding was secured for Phase 2.
7. For the purpose of this Application by Goldcorp, only Phase I of the Pipeline is relevant.
8. The Board issued a Notice of Application and Hearing ("Notice") on March 8, 2011. Union served and published the Notice as directed by the Board.
9. On April 1, 2011 the Board issued its Procedural Order No. 1 which outlined its process for written interrogatories and final submissions. Board staff, Union and Goldcorp were the only active participants in the proceeding which was completed in accordance with the schedule set in the Procedural Order No. 1 on May 3, 2011 with Union's reply submissions to the Board Staff submissions dated April 29, 2011.
10. On May 5, 2011, one day after the Board's original date for written reply submissions (May 4, 2011) as outlined in Procedural Order #1, and approximately 7 weeks after the deadline for requests for intervenor status, the Board received a letter from the Grand Council of Treaty 3 (the "Grand Council") outlining concerns with the application.
11. On May 11, 2011 the Board requested that Union file a formal response to the letter. Union filed its response on May 12, 2011. On May 16, 2011 the Board invited the Grand Council to reply to Union's letter. The Grand Council filed its reply on May 30, 2011. The Grand Council's reply expressed concerns relating to the adequacy of the Crown's consultation efforts pursuant to the *Constitution Act, 1982* in respect of the application.
12. This was one of the first times (if not the first time) in the context of a natural gas facilities proceeding that the Board was faced with questions regarding its jurisdiction and procedures related to Aboriginal consultation. Accordingly, on June 7, 2011 the Board issued Procedural Order #2 in which it posed the following three jurisdictional and procedural questions (the "Jurisdictional and Procedural Questions"), and scheduled written submissions and an oral hearing to address them:

- i. *The duty to consult arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it. In the current case, what is the conduct that the Crown has contemplated that has the potential to adversely impact an Aboriginal right or title? What is the Crown's responsibility with respect to this project, which is being undertaken by a private proponent?*
- ii. *To the extent that there are duty to consult issues associated with the project, what is the scope of the Board's power to review them? In particular, should the Board's review be limited to potential impacts arising directly from the proposed natural gas pipeline itself (over which it has approval authority), or indirect impacts such as potential expansions to the mine or the town that may be enabled by the pipeline (over which it has no approval authority)?*
- iii. *Can the Crown impliedly delegate the duty to consult to a private proponent?*

13. On June 9, 2011 the Board received a request from the Lac Seul First Nation ("LSFN") requesting late intervention status.
14. On June 10, 2011 the Board issued Procedural Order #3 and set the extended date for filing written submissions on the Jurisdictional and Procedural Questions by the parties and Board staff. The Board also granted the intervention request to the LSFN for the purpose of making submissions on the Jurisdictional and Procedural Questions as part of Procedural Order #3.
15. In accordance with Procedural Order #3, the following parties provided written submissions on June 17, 2011: Board staff, the Grand Council, LSFN, Union and Goldcorp.
16. Wabauskang First Nation ("WFN") informed the Board by a letter dated June 17, 2011 that it would appear in the oral hearing on June 20, 2011 and that it intended to make oral submissions. At the oral hearing, the Board allowed WFN to make submissions on the Jurisdictional and Procedural Questions.
17. The oral hearing was held on June 20, 2011, and the Board issued a decision on the Jurisdictional and Procedural Questions and granted Union leave to construct on July 25, 2011, 80 days after the May 4, 2011 original date for final reply submissions as provided for in Procedural Order #1.
18. This delay occurred during the prime construction period in Northwest Ontario and impacted contractor availability and costs. Due to the shortened construction season and decreased construction efficiency, the facilities were constructed over two years, rather than a single construction season as planned.

II - Union's Construction Costs:

19. According to Union, construction of Phase I of the Pipeline was completed on November 30, 2012. Please see Union's letter that confirms the completion of construction attached at Appendix "B".
20. According to a letter from Union to the Board dated April 22, 2014 (please see Appendix "C"), the two-year construction period resulted in additional costs in the amount of \$3.3 million (the "Delay Costs"). Approximately 72% of the Delay Costs are allocated by Union to Goldcorp, and approximately 28% are allocated to the Municipality of Red Lake. Therefore, Goldcorp will incur approximately \$2,375,000 of additional costs associated with the delay.
21. It is worth noting that in addition to the Delay Costs, Goldcorp had to bridge the Municipality of Red Lake's Phase 1 CIAC until May 24, 2012. In addition, Goldcorp did not realize the estimated \$3.28 million in heating cost savings that would have resulted if its Red Lake Goldmines had been able to convert to natural gas in 2011 as planned. However, Goldcorp is not seeking recovery of these costs.

III – The Board's Jurisdiction to Determine the CIAC:

22. Goldcorp has filed this application under Section 36 of the Act because the Board's Decision with Reasons in EB-2012-0396 related to Natural Gas Resources (NRG) held that a capital contribution is a rate.
23. The Board further indicated in its EB-2012-0396 Decision that:

"In cases where the parties cannot agree on the appropriate amount (which are rare), the Board will intervene to settle the dispute and ensure that a just and reasonable rate is established."

24. Union and Goldcorp have had numerous discussions on who should bear the cost responsibility of the Delay Costs and the parties have been unable to reach any agreement.

IV - Orders Sought:

25. Goldcorp requests the Board order Union to exclude all of the Delay Costs from its calculation of CIAC for the Pipeline.

26. In the alternative, Goldcorp requests the Board to make a determination of the appropriate quantum of the Delay Costs that should be excluded from the economic test used to determine the final CIAC for the Pipeline.
27. Goldcorp submits that the Jurisdictional and Procedural Questions that prolonged Union's leave to construct proceeding were of a generic nature addressing issues of broad jurisdictional responsibility that will serve as guidance for future inquiries regarding facility construction in Union's service territory. As such, all of Union's customers will benefit from the Board's review of the Jurisdictional and Procedural Questions and should therefore share cost responsibility for the Delay Costs.
28. So that there is no uncertainty, Goldcorp is not suggesting that there was any wrongdoing associated with the Delay Costs. The Delay Costs are an unfortunate consequence of the Board appropriately analyzing its jurisdictional and procedural obligations related to Aboriginal consultation for likely the first time in the context of constructing a natural gas pipeline. Nevertheless, in light of the generic nature of the Jurisdictional and Procedural Questions, it would be unfair for Goldcorp to bear sole responsibility for the \$3.2 million Delay Costs.
29. Goldcorp requests that this proceeding be dealt with by way of written hearing. Further, in addition to the appendices to this application, Goldcorp relies on the record in EB-2011-0040.
30. The Applicant requests that a copy of all documents filed with the Board in this proceeding be served on the Applicant and the Applicant's counsel, as follows:

The Applicant

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All of which is respectfully submitted.

July 4, 2014

A handwritten signature in black ink, appearing to read "Andrew Taylor", written in a cursive style.

Goldcorp Inc.

By its counsel Andrew Taylor