



ONTARIO ENERGY BOARD

STAFF SUBMISSION

Goldcorp Inc.

EB-2014-0234

December 12, 2014

Application

On July 4, 2014 Goldcorp Inc. (“Goldcorp”) filed an application under section 36 of the *Ontario Energy Board Act* (“Act”) for the determination of the appropriate amount of Contribution in Aid of Construction (“CIAC) for a natural gas pipeline that was the subject of the Red Lake leave to construct application¹.

There was a delay in the construction of the pipeline which resulted in additional costs (the “Delay Costs”). Goldcorp is asking the Board to order Union to exclude \$2.375 million of the additional costs from Goldcorp's CIAC for the pipeline. In the alternative, Goldcorp is asking that the Board should determine “...the appropriate quantum of the Delay Costs that should be excluded from the economic test used to determine the final CIAC for the Pipeline”².

In the application Goldcorp states that it applied under section 36 of the Act because the Board previously held that a capital contribution is a rate³. Board staff agrees with Goldcorp.

Issue

Board staff submits that the issues to be determined by the Board are whether the Delay Costs were reasonable and the appropriate quantum of the Delay Costs that should be attributable to Goldcorp. Board staff has reviewed the record and makes the following submission.

Background to the Application

The Red Lake Leave to Construct Application

Union filed the leave to construct application for the Red Lake Project (EB-2011-0040) which was heard together with applications for a Municipal Franchise Agreement for the Municipality of Red Lake (EB-2011-0041) and a Certificate of Public Convenience and Necessity for Red Lake (EB-2011-0042). On July 25, 2011 the Board approved all three applications. The Red Lake Project consisted of two phases. Phase I consisted of approximately 43.6 km of pipelines delivering gas to Goldcorp 's mine sites in Balmertown and Cochenour (“Red Lake Lateral”). Phase II consisted of distribution pipelines that connect to the Red Lake Lateral and provide natural gas to residential and commercial customers within the Municipality of Red Lake.

¹ Proceeding EB-2011-0040

² Goldcorp Application, EB-2014-0234 paragraph 26

³ Proceeding EB-2012-0396

By way of background, the Board issued a Notice of Applications and Hearing on March 8, 2011. Goldcorp was an intervenor in the proceeding supporting Union's application.

Board staff, Goldcorp and Union were the only active participants in the written proceeding.

After intervenor's submissions and reply submissions were filed, on May 5, 2011 the Board received a letter from the Grand Council of Treaty 3 (the "Grand Council") outlining concerns with the three applications. On June 7, 2011, the Board issued Procedural Order No. 2 in which it posed three questions relating to the Crown's duty to consult setting out dates for written submissions and an oral hearing to address these questions. A late intervention request by the Lac Seul First Nation ("LSFN") was received by the Board on June 9, 2011. The Board issued Procedural Order No. 3 on June 10, 2011, wherein it granted the intervention request to the LSFN and extended the timeline for filing written submissions on the questions on the Crown consultation.

On June 17, 2011, in accordance with Procedural Order No. 3, Board staff, the Grand Council, LSFN, Union and Goldcorp filed written submissions.

By way of letter dated June 17, 2011 the Wabauskang First Nation ("WFN") informed the Board that it would appear at 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 questions related to Crown's duty to consult.

Board staff, the Grand Council, WFN, LSFN, Union and Goldcorp participated in the oral hearing held on June 20, 2011.

By way of Decision and Order issued July 25, 2011, (the "Decision") the Board approved the applications.⁴

In its Decision the Board noted that the late intervention by the First Nation parties and the Board's decision to hold an oral hearing on the questions on Crown's duty to consult extended the proceeding beyond what was originally anticipated. The Board further noted as a result of the delay, there may be increased construction costs as a

⁴ Ontario Energy Board, Decision with Respect to Preliminary Questions and Final decision and Orders, July 25, 2011 (EB-2011-0040/EB-2011-0041/EB-2011-0042)

consequence due to the later than planned construction date. Specifically, in its Decision the Board stated⁵:

“The Board is also sympathetic to the concerns of Union and Goldcorp regarding any further delay in this process. Union has followed all of the Board’s directions. The Board recognizes that the construction season in the District of Kenora is a short one, and that further delay may mean that construction of the Project cannot commence until 2012. Undoubtedly this would lead to additional expense for Union and Goldcorp.”

Red Lake Phase 1 Construction Schedule

Union’s planned construction schedule at the time of EB-2011-0040 proceedings was presented in the pre-filed evidence⁶. The plan was to construct Phase 1 of the project in a single season during 2011. According to Union’s written evidence in the current proceeding, Union considered 3 options⁷ to address a delay in the construction start.

Option 1 was to compress the project construction timeline and complete the Phase 1 in 2011. Option 2 was to start the construction upon issuance of the Board’s approval and complete the project in 2012. Option 3 was to stop all pre-construction work and complete the majority of the work in 2012.

Option 2 was pursued by Union and, according to Union’s evidence, Goldcorp was informed of this in a meeting on July 28, 2011. According to Union, Goldcorp endorsed a two season construction schedule “Option 2”. At that time “Goldcorp also indicated that it did not believe that Goldcorp should bear any costs driven by regulatory delay.”⁸

In this proceeding, in response to a question posed by the Board in Procedural Order No. 2 Union provided a comparison of the cost of three construction options based on the following criteria: additional delay costs, incremental costs for compressed time frame and weather risk, mobilization/demobilization costs, total estimated project costs, estimated in-service date, and risk of not meeting in-service date. Union indicated that Option 1 (complete construction in 2011) was not feasible because the short construction season in the north resulted in a high risk of not meeting the in-service date and the total estimated project costs were the highest of three options. Union evaluated Option 2 (partial completion in 2011 and finish in 2012) as the preferred option. When

⁵ Ontario Energy Board, Decision with Respect to Preliminary Questions and Final Decision and Orders, July 25, 2011 (EB-2011-0040/EB-2011-0041/EB-2011-0042), page 31.

⁶ EB-2011-0040, Schedule 11, page 1.

⁷ Intervenor Evidence by Union Gas Limited, October 28, 2014, EB-2014-0234, pages 3 and 4.

⁸ Union’s Written Intervenor’s Evidence page 4 lines 8 and 9.

compared to Option 3 (complete in 2012 in a single season), Option 2 was assessed by Union as more acceptable as the overall costs were lower and a one season construction schedule under Option 3 may not be achieved due to weather conditions.

Union mobilized construction crews prior to the Board's approval in April 2011⁹. This is, according to Union, a standard practice. Pre-construction activities included tree clearing along the right of way construction of some access roads and setting up a yard to store some of the steel pipes. Union stated that these pre-construction activities were not dependent on the Board's approval. Union started construction on August 8, 2011 and completed the Phase 1 construction in 2012. The construction was conducted over two construction seasons. On November 1, 2012, in accordance with the conditions of approval set out in the Board's Decision, Union informed the Board that both Phase 1 and Phase 2 pipelines were tested. On December 20, 2012, Union further informed the Board that Phase 1 of the Red Lake Project was completed on November 30, 2012.

Board staff submits that Union's decision to pursue Option 2 for the construction of the pipeline was appropriate as it lowered the overall costs and reduced the risk of the construction not being completed on time. Board staff also notes that Goldcorp agreed with Union's selection of Option 2.

Construction Costs Overruns

Union filed with the Board a Post Construction Financial Report based on the actual costs of construction (the "Report") in accordance with the conditions of approval set out in the Decision.

The Report indicates that the total increase in Phase 1 project costs is \$4.3 million. This is the variance between the estimated \$26.9 million and actual \$31.2 million total Phase 1 costs.

The following table¹⁰ summarizes the cost overruns and how these overruns are characterized and proposed to be allocated by Union.

⁹ Union's response to Board's questions, filed December 8, 2014

¹⁰ This table was created by Board staff for ease of reference. All the information in the table is already on the record of this proceeding.

Construction Costs Overruns and Union's Proposed Recovery

| | \$ million | Union's Proposed Costs Recovery |
|---|-------------------|--|
| Total Overruns | \$4.3 | |
| Total Delay Costs | \$3.3 | |
| 28% of \$3.3 million (Note: corresponds to the pipeline capacity allocated to the Municipality of Red Lake) | \$0.925 | Union's North zone ratepayers (Note: including Goldcorp) |
| 72% of \$3.3 million (Note: corresponds to the pipeline capacity allocated to Goldcorp) | \$2.275 | Goldcorp to pay to Union increase in CIAC |
| | | |
| Overruns due to Other Reasons | \$1.0 | Union's North zone ratepayers (Note: including Goldcorp) |

Union identified \$3.3 million of the \$4.3 million total overruns as the total Delay Costs.

Union stated that the \$1million difference (Overruns due to reasons other than the delay of construction) between \$4.3 million and \$3.3 million would be recovered from its North zone ratepayers. Union allocated approximately 72% of the Delay Costs to Goldcorp and approximately 28% to the Municipality of Red Lake¹¹. This corresponds to the capacity allocation of the Phase 1 main line costs between Goldcorp and the Municipality. The 28% of the \$3.3 million is \$0.925 million, which Union stated will be recovered by Union from its North zone ratepayers.¹² Union invoiced the remaining \$2.275 million of the Delay Costs to Goldcorp as an increase in the CIAC.

¹¹ According to Union's response to Board staff Interrogatory # 2 Union updated its rate base by \$0.925 million to recover this portion of the Delay Costs. The Municipality of Red Lake could not obtain funds to pay \$0.925 million variance. In a letter to the Board, dated July 10, 2014, the Municipality of Red Lake stated that "...under its agreement with Union Gas, the Municipality of Red Lake (and its funding partners) are not responsible for any cost overruns related to the project" (page 2, paragraph 2).

¹² Union Response to Board staff Interrogatory #1, November 25, 2014, page 2.

Capital Contribution in Aid of Construction

After actual construction costs were established Union increased the CIAC for Goldcorp by \$2.375 million. Goldcorp declined to pay this increase and, in this application, has asked the Board to exclude this amount from the CIAC. Goldcorp based its application on a contractual agreement with Union.¹³ Goldcorp submitted that section 11 of the Northern Gas Distribution Contract with Union reads: “As set out in section 11, Goldcorp is responsible for varying percentages of actual costs of the pipe sections, “unless otherwise determined by the Ontario Energy Board”.”

It is noted that Goldcorp is not questioning the prudence of the construction Delay Costs. However, it is Goldcorp’s view that the Delay Costs should not be borne solely by Goldcorp as they are a direct result of the extension of the EB-2011-0040 proceeding to hear issues of the Crown’s duty to consult. Goldcorp further submitted that the Board’s decision on the Crown’s duty to consult is “of a generic nature” and all of Union’s customers will benefit from the Board’s review of the jurisdictional and procedural questions considered in the EB-2011-0040 proceeding¹⁴.

Analysis of Cost Overruns

Board staff notes that Union’s Post Construction Report explained the reasons for the cost overruns. The most significant variance in the Phase 1 portion of the project was caused by the construction over two years instead of one year. The additional costs of constructing the pipeline over two years were approximately \$3.3 million.¹⁵

In response to Board staff Interrogatory # 2, Union filed a table identifying the actual costs variances from estimated costs per each cost item of the construction and indicated which variances were caused directly by the construction delay over two seasons and which were caused by other reasons.

Union explained that additional costs of a two season delay were incurred due to mobilization/demobilization, equipment standby, and loss of productivity time.

Costs overruns of about \$1.0 million were, according to Union, incurred by reasons other¹⁶ than the two season construction. Included in the category of “Other Reasons”

¹³ In response to Board staff Interrogatory #2 Goldcorp filed a copy of its Northern Gas Distribution Contract with Union dated March 11, 2011.

¹⁴ Goldcorp Application, EB-2014-0234 paragraph 27

¹⁵ Union’s Post Construction Report (EB-2011-0040), April 22, 2014, cover letter

¹⁶ Union included in the category of “Other Reasons” the following: costs associated with increased clearing and Horizontal Directional Drilling costs; scope changes by customers and agencies, greater inspection and outside service costs, the regulatory cost of an oral hearing which was not anticipated, and additional costs incurred to obtain easements due to pipeline route changes.

were costs associated with increased clearing and Horizontal Directional Drilling costs; scope changes by customers and agencies, greater inspection and outside service costs, the regulatory cost of an oral hearing which was not anticipated, and additional costs incurred to obtain easements due to pipeline route changes.

Board staff submits that Union has confirmed, in response to Board Staff Interrogatory #1, that it has already updated its rate base for \$0.925 million to recover 28% of the Delay Costs from its ratepayers. Union indicated that its rates will not be impacted by this change in rate base until Union's 2019 Cost of Service Application.

Union also confirmed that the cost overruns of about \$1 million incurred for "other reasons" will be recovered by Union's ratepayers.

Board staff has no issues with Union's explanations of the costs overruns.

Board Staff Submissions

The total Delay Costs of \$3.3 million include \$2.375 million that Union proposed to charge to Goldcorp as an increase in the CIAC, and \$0.975 million, which Union proposed to recover from its rate payers in the Northern zone.

Union estimated, in response to Board Staff Interrogatory # 1 that, should the Board decide to order Union to recover the Delay Costs of \$2.375 million from its ratepayers, the rate impact would be \$1.25 per year for an average residential customer in Union's North zone.

Board staff agrees with Union's proposal to recover the \$0.975 million from rate payers in the Northern zone, including Goldcorp. Board staff also submits that the remaining Delay Costs of \$2.375 million should also be recovered from Union's North zone ratepayers, including Goldcorp.

Board staff agrees with Goldcorp's proposition that all of Union's rate payers benefitted from the Board's review and decision on issues on aboriginal consultation and the Crown's duty to consult in proceeding EB-2011-0040. Board staff submits that the Board's review of the Crown's duty to consult and aboriginal consultation questions were issues of broad public interest.

Board staff submits that the allocation of all Delay Costs should be based on Union's North rate classes' share of the allocated rate base, rather than using the capacity

allocators of the Red Lake Project to determine the quantum of costs that would be attributable to Goldcorp. This approach in Board staff' views is better aligned with the proposition that the Board's review and decision on issues on aboriginal consultation and the Crown's duty to consult were broad public interest issues adjudicated by the Board for the benefit of all customers.

- All of which is respectfully submitted -