

From: Jean-David Turcotte <jdturcotte@CANMEC.COM>
Sent: 1/12/2016 11:32:43 AM
To: Mavromatis William
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Subject: MFG-CNM-HCM-P / Change Conditions and Delay (1994)

Attachments: [image001.png](#), [image002.jpg](#), [1994-CNM-HAL-056 - Rev.0 - Change Conditons and Delay.pdf](#)

Hello Bill,

Enclosed is our letter 1994-CNM-HAL-056 regarding Change Conditions and Delay.

Please Acknowledge reception.

This letter may be part of our discussions tomorrow.



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January 12th, 2016

1994-CNM-HAL-056

Mr. Bill Mavromatis
Project Management
ANDRITZ HYDRO LTÉE
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Subject: Change Conditions and Delay

Dear Mr. Mavromatis,

We acknowledge reception, on December 23th 2015, of LCP's letters 190 and 191 regarding Spillway Work Area Change Conditions and Civil Delay. Considering the arguments and opinions expressed by LCP's in these correspondences, we consider critical to recall the basis of our requests and to comment some of LCP's allegations.

Change in Work Area Conditions:

The Exhibit 9 of the Contract clearly defines the expected Work Area Condition upon Milestones I1A and I1B. More specifically, the definitions of the Work Area Conditions include the "*Completion*" of all major Civil Works that may have an impact on our Work such as the "Downstream Bridges" and the "upstream Bridges". The Contract also specifies that both "Spillway Discharge Channel" and "*Spillway Upstream Channel*" must be "*free for Hydro-Mechanical Contractor CH0032 occupation*" upon achievement of milestone I1B and I1A respectively.

The presence of the Tower Crane in the "*upstream Channel*" as well as the concurrent activities on the "*upstream bridges*" are both examples of "*A variation to the schedule for the completion of a Milestone (...) resulting from an act or omission by Company Group*" as it is defined in section 1.2-k (v) of the Agreement and then constitute a Change that create coordination and extra Work for us.

As especially specified in Article 2.15 of section 48 13 10 of the Technical Specification and also as it is indicated by LCP in the referred letters, we have the obligation to coordinate our installation activities with Company's other Contractor. However, all Contractual specifications being complementary, this coordination was expected to be within the other contractual requirements such as the ones specifically defined in Exhibit 9. Any coordination created by conditions that differs from the conditions defined in the Contract constitutes a Change and must be treated as such.

Quantification and Compensation related to the Changes:

In the referred letters, LCP's rejects our requests item per item, arguing that we haven't be directly affected by Work stoppage or that we failed to coordinate following the information given in coordination meeting.

It is well known in Construction Industry that unforeseen interference with others have an impact on overall productivity as well as a direct negative impact on the affected Work. Our past experiences demonstrated that working conditions, like the new unforeseen work area



conditions that prevail at Muskrat Falls, significantly affect our performances. We already provided AH with statistical studies, made by the National Research Council (NRC) and based on real cases, that demonstrate that stacking of trades, overcrowding and other change in working conditions may affect seriously the performance of the Work and increase significantly the cost and the schedule.

It is also well known that such kind of change cannot be treated on a case by case basis. Each event having an impact on each other and on the overall performance. For this reason, all the consequences arising from the non-readiness of the Civil Work pursuant to Milestone I1A and I1B will be managed as one on-going case until the Completion of the Work.

As stipulated in Article 26.8-c (ii), we will “*provide Company a reasonable estimate of the quantification of the request*” on a regular basis by showing the impacts of the Changes on our actual performances. It is also important to know that our analysis will take into account the other Changes such as the acceleration of the schedule (CHO-003) and the repair of the Primary Anchors (CHO not received yet).

Our final cost impact calculation will demonstrate the overall difference between the actual cost and duration and the planned cost and schedule as per Contract requirements. The calculation will take into consideration every Change to the Work, as well as impact belonging to Contractor, and will be validated by independent studies (NRC).

LCP’s allegations regarding Contractor’s attitude:

LCP’s opinion that we “*adopted a negative and excuse focused attitude*” and that we focus on “*complaining about situation alleging delay*” is a non-factual and unfounded argument. All of our efforts are directed toward the improvement of the Work sequence and our team is directed to make everything in their power to minimize the impact of the unforeseen interfaces on the Work. We are very disappointed that all of our efforts are interpreted that way by AH and LCP.

In addition of having repeated many time the potential negative impact of interferences with others, we proactively submitted, through correspondence 1994-CNM-HAL-044, term sheets allowing the equitable management of the Changes in working conditions in order to avoid this actual situation. The parties failed to reach an agreement prior to this expected situation which forces us to follow the Contractual requirements regarding Change Management.

As demanded in Article 26.8 of the Agreement, we have the obligation to notify that “*an occurrence has taken place which constitutes a Change*”. This demand is expressly made in the Contract written by LCP. We hardly understand how they could interpret our notifications as excuses and complaints. Our only intent is to keep tracking on site condition to avoid further confusion and misunderstanding and to protect our right.

Our capacity of managing this situation being limited by our position in the communication protocol, we rely on AH usual cooperation to accurately transmit our positions to LCP during the coordination meetings. We also expect a partnership oriented transparency from AH and an equitable sharing of the pressure given by LCP in the management of the interfaces.

Management of the Execution Schedule:

Our inability to “*submit an approved schedule and execution plan for prosecuting the works*” is a direct consequence of LCP’s failure to provide precise and accurate execution Milestones, to provide site conditions details and to provide progress status of other Contractors. We then consider any argument based on our schedule and used to reject our request as unfounded and belonging to LCP’s responsibility.



We will continue our scheduling and interface coordination effort but, until LCP achievement of the level of completion required by Milestones I1A and I1B, it will be impossible for us to follow and respect a theoretical and pre-defined schedule.

We consider also important to remind that, as long as we are executing the Work under a lump sum performance Agreement, the final decisions regarding scheduling and Work method allowing the execution of the Contract requirements are our responsibility. Obviously, we will keep constant communication with AH to manage the interfaces and we will continue to consider any useful suggestion made by AH and LCP to improve our performances.

Please note that we will be available to discuss with you in order to align our common actions on that matter.

Best regards,

A handwritten signature in black ink, appearing to read "Jean-David Turcotte", written in a cursive style.

Jean-David Turcotte, Eng.
Project Director – Hydroelectricity

JDT/et

Cc: Mathieu Bertrand, Andritz
Éric Tremblay, Canmec Industrial
Jean-François Harpin, Andritz