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OFFICE OF THE CAO/CLERK
File No. 4-6

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Delivered by Email and RESS

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

Re: Gas distribution to the Town of Marathon, the Township of Manitouwadge, the Township of Schreiber, the Township of Terrace Bay and the Municipality of Wawa (the “Municipalities”) – Board File Number EB-2018-0329

The Corporation of the Town of Marathon is writing to respond to a letter dated January 16, 2019 (the “January 16 Letter”) that was sent to the Ontario Energy Board (the “Board”) by Enbridge Gas Inc. (“Enbridge”) in connection with a pending application by the Municipalities under Board file number EB-2018-0329 (the “North Shore Project”).

1. Background

On December 4, 2018, the Corporation of the Town of Marathon submitted to the Board a notice of intent to file an application to the Board on behalf of the Municipalities for the North Shore Project by June 28, 2019.

On December 20, 2018, the Board issued a letter directed to any party that is currently developing a plan to provide natural gas services to the Municipalities (the “Notice Letter”). The Notice Letter requested that interested parties file a response letter by January 16, 2019. It also requested that any party “currently developing a plan” to provide natural gas services to the Municipalities file a letter indicating so and include in that letter certain information requirements. In particular, the Board stated a responding party must provide the following minimum information:

- The name of the company;
- A brief description of the work already undertaken to support its application(s) to the Board;
- The date by which the company will be ready to file its complete application(s) to provide gas distribution services to the Municipalities;
- A description of the level of municipal engagement already undertaken with all five of the Municipalities;
- A high-level description of the proposed system to serve the five Municipalities;
- A preliminary gas supply plan; and
- Confirmation that it is in a position to file a complete application with the Board by June 28, 2019.

The Board also stated in the Notice Letter that, in the absence of letters from any other interested gas service providers, the Board would proceed to review the application by the Municipalities when filed.

2. Action Sought

The Corporation submits that Enbridge did not provide the minimum information set out in the Notice Letter, nor did Enbridge confirm that it is “currently developing a plan” to provide service to the Municipalities. Enbridge’s indication of its speculative interest in the Municipalities is excessively weak. Consequently, the Corporation respectfully requests that the Board disregard the January 16 Letter, as submitted by Enbridge; the Board proceed to review the application by the Municipalities when it is filed; and the Board not delay its review of the application to accommodate the filing of any competitive application in this matter.

3. Reply to Enbridge’s Submission

3.1. Speculation is not a considerable factor

The speculative interest in serving the Municipalities expressed by Enbridge is far from the confirmation required by the Board. The January 16 Letter states that Enbridge is “interested in serving the North Shore Communities and continues to evaluate and further develop plans to serve these communities. However, as noted earlier in this submission, Enbridge Gas believes it is premature to be able to commit to file a complete application by June 28th.”

It is unreasonable for Enbridge to use the occasion of the Board’s Notice Letter, and the underlying Board guidelines, to reserve a potential future business opportunity for Enbridge. The primary effect of this would be to delay the initiative of the Municipalities to make natural gas available to their residents and businesses. The Province of Ontario has identified increasing access to natural gas as a public policy priority and the Board has determined that the expansion of natural gas in Ontario is a competitive market. Enbridge is a mega utility controlling virtually every natural gas customer in Ontario. It should not be allowed to frustrate the public interest and abuse the Board’s process. To do so would be fundamentally anti-competitive.

Further, Enbridge's letter asserts: "The economic viability of any project, by Enbridge Gas or by the Town of Marathon, cannot be determined until Bill 32 regulations are issued and implemented." This is untrue. The Municipalities established the economic feasibility of the North Shore Project in 2016, more than two years before Bill 32 was contemplated in 2018.

3.2. No description of the work already undertaken

The Notice Letter states that any responding party must demonstrate that it is actively exploring the opportunity to provide services to the Municipalities. The January 16 Letter does not address this minimum requirement. Other than its reference that Enbridge "investigated serving these communities several times in the past," Enbridge's letter provides no basis upon which it can demonstrate that it has any plans to provide service in the Municipalities. Indeed, while the intent of the Notice Letter is to solicit interest from any party that is "currently developing a plan" to provide gas services, Enbridge has neither stated nor demonstrated it is "currently" developing anything regarding the Municipalities.

3.3. No date by which Enbridge will be ready to file its complete application(s)

The Notice Letter states that any responding party must demonstrate that it is in a position to file a complete application by June 28, 2019. Again, Enbridge does not address this minimum requirement. The January 16 Letter makes it clear that Enbridge is not in a position to file a complete application by June 28, 2019, and it gives no indication of when Enbridge will or might be in a position to file a complete application.

3.4. No evidence of engagement undertaken with the five Municipalities

Enbridge has provided no evidence that it has engaged with any of the Municipalities, let alone all five, on any level. This position by Enbridge would appear clearly to illustrate that there has been no "level of municipal engagement." The Municipalities are particularly sensitive to this point. They have taken the initiative to develop comprehensive systems; they have secured financing to permit further development; they have applied to the Board in their own interest and they now face frustration from a party that has had every conceivable opportunity to provide service and has done nothing. Any delay will withhold gas from residents and is not in the public interest.

3.5. No high-level description of the proposed system to serve the five Municipalities

Enbridge has indicated that it completed preliminary analysis on piping plans for the communities of Terrace Bay, Schreiber and Marathon as part of a community expansion proposal made to the Board in 2015. The Municipalities submit that the claim concerning the piping plans should be disregarded, as the preliminary analysis was done without the knowledge of the Municipalities, without any consultation with Municipal staff, and only included three of the Municipalities, not all five.

3.6. No preliminary gas supply plan

The Municipalities submit that the preliminary gas supply plan as proposed by Enbridge in the January 16 Letter is simply the product of copying another's work and should be disregarded. Enbridge states it has ruled out a pipeline from the TransCanada Mainline due to costs, but it presents no evidence it considered LNG or CNG as gas supply options for the Municipalities until now. In 2014, Union Gas, a predecessor company of Enbridge, applied to the Board to dispense LNG from Hagar in the matter of EB-2014-0012. However, Union Gas did not include off-pipeline communities as a potential market in the Hagar case, despite similar concepts under development by other Canadian utilities. In 2015, Union Gas only considered the pipeline option to exclude Terrace Bay, Schreiber and Marathon from the list of communities that it wished to serve in the matter of EB-2015-0179. Finally, in 2016, Enbridge Gas Distribution, another predecessor company, included a list of community expansion projects under consideration using LNG in the matter of EB-2016-0004, but did not include the Municipalities. The failure by Enbridge and its predecessor companies to identify, evaluate and advance alternatives to a pipeline to service the Municipalities indicates that Enbridge lacked the initiative, motive, or desire to serve the Municipalities until plans were developed and published by another party.

3.7. No confirmation that it is in a position to file a complete application by June 28, 2019

As previously stated, the January 16 Letter makes it clear that Enbridge is not in a position to file a complete application by June 28, 2019, and it has given no indication of when it will or might be in a position to file a complete application. The Municipalities, which have worked hard to introduce service in a timely manner, submit this failure should disqualify Enbridge's expression of interest, based on the precedent of Bobcaygeon and Scugog Island (EB-2017-0260 / EB-2017-0261), cases where Enbridge was the applicant and a new entrant was the respondent.

In 2017, Enbridge issued a letter of intent to the Board regarding Bobcaygeon and Scugog Island to which the Board issued a letter to all natural gas providers, similar to the Notice Letter. EPCOR responded with a submission to which Enbridge countered with a fulsome reply argument to the Board. Enbridge concluded:

In view of the contents of EPCOR's letter, the only conclusion to be drawn is that allowing Enbridge's application to be delayed while EPCOR develops a plan to serve either or both of Bobcaygeon and Scugog Island would cause a substantial delay to Enbridge's proposal to extend gas service to these communities.

Waiting while EPCOR pursues its interest in developing competitive proposals will only prove a detriment to the communities looking to be served.¹ (Emphasis added.)

¹ Ontario Energy Board EB-2017-0260 / EB-2017-0261. Letter from Enbridge Gas Distribution to the Ontario Energy Board, November 24, 2017.

The Board agreed with Enbridge and issued the following determination to EPCOR:

*The OEB has reviewed EPCOR's letter and supporting materials and has determined that EPCOR has not met the minimum information requirements of the OEB. In particular, **EPCOR did not provide any substantive information with respect to work undertaken to support its application and did not commit to providing an application to the OEB by December 2017.***²
(Emphasis added.)

3.8. Further Considerations

Within the context of soliciting interest from natural gas providers, it is important that the Board appreciate the following considerations.

1. In regard to the fairness of the Board's competitive process, the January 16 Letter concludes with Enbridge requesting the opportunity to participate in any competitive process before the Board for the right to serve the Municipalities. Enbridge seems to believe that fair competition requires that it be granted an extended period of time to develop a proposal to serve the Municipalities. Enbridge acknowledges that significant time is required to scope community expansion projects properly and complete the requirements of leave to construct applications. However, the Municipalities submit that Enbridge has had a reasonable amount of time to do so while possessing immensely more resources than available to the Municipalities.
2. The Board is aware from the EB-2016-0004 proceeding that communities in Ontario currently without natural gas service are keenly focused on avoiding undue delays in the completion of viable system expansion projects. The Notice Letter takes account of concerns of this nature, in providing an application deadline of June 2019 and by setting out other minimum requirements. Not only does Enbridge fail to meet the Board's minimum requirements, it also fails to address the interests and concerns of communities that seek to avoid undue delays, a considerable factor highlighted by Enbridge in the matter of Bobcaygeon and Scugog Island.
3. Beyond all of the deficiencies in the January 16 Letter, the Board should take into consideration that Enbridge is a mega utility with a vast cadre of regulatory and business development professionals advised by the leading lawyers at elite national law firms, all funded by more than three million natural gas consumers. Enbridge should not be allowed to exploit its market power and deploy these considerable resources to systematically frustrate projects by others to expand access to natural gas to northern and rural communities. Any delay in processing this application to a time that Enbridge believes is right for them, if ever, is contrary to the competitive process initiated by the Board.

² Ontario Energy Board EB-2017-0260 / EB-2017-0261. Letter from the Ontario Energy Board to EPCOR, December 7, 2017.

On a practical level, if Enbridge is permitted to seek the time needed to undertake a competitive process similar to Southern Bruce, such a delay will put at risk the construction season in the Municipalities, negatively impact the cost of the North Shore Project and impair the economic feasibility by raising rates and reducing the energy cost savings that would otherwise be realized by the residents and businesses in the Municipalities.

Conclusion

For all these reasons, the Municipalities respectfully request that the Board disregard the January 16 Letter and proceed with consideration of the application by the Municipalities when filed, in accordance with the Board's usual procedures and timelines for such applications and that those usual procedures and timelines not be altered, extended or delayed by reason of Enbridge's statement of its speculative interest in developing a competitive proposal.

All of which is respectfully submitted.

Sincerely,

The Corporation of the Town of Marathon



Daryl Skworchinski
Chief Administrative Officer/Clerk/Director of Economic Development

cc Karen Hockin, Enbridge Gas Inc.
Mark Kitchen, Enbridge Gas Inc.
Charles Keizer, Torys

DS:lw