

Alan L. Ross  
T (403) 232-9656  
F (403) 266-1395  
aross@blg.com

Borden Ladner Gervais LLP  
Centennial Place, East Tower  
1900, 520 - 3rd Ave SW  
Calgary, AB, Canada T2P 0R3  
T 403.232.9500  
F 403.266.1395  
blg.com



October 3, 2019

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Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, Ontario M4P 1E4

**Attention: Kirsten Walli  
Board Secretary**

Dear Madam:

**Re: EB-2018-0329 – Objection by Nipigon LNG Corporation (“NLNG”) in its capacity as the general partner of Nipigon LNG LP in respect of Vulnerable Energy Consumers Coalition’s (“VECC”) Intervenor Request**

- 1) We act as counsel to NLNG in respect of the above-noted matter. Pursuant to the Notice issued by the Board on September 12, 2019, NLNG submitted an intervenor request to the Board in respect of proceeding EB-2018-0329 (the “Proceeding”) on September 27, 2019.<sup>1</sup>
- 2) The Proceeding relates to an application by the Corporation of the Town of Marathon, on behalf of its partner municipalities, the Township of Manitouwadge, the Township of Schreiber, the Township of Terrace Bay, and the Municipality of Wawa (the “Municipalities”) to the Board for approval to construct a total of 116.5 kilometres of natural gas pipelines (the “Application”).
- 3) We are writing to object to the Notice of Intervention filed by counsel to VECC on October 1, 2019.

#### **Objection to the Notice of Intervention**

- 4) VECC has failed to establish reasonable grounds for intervention under the “substantial interest” test, and appears to be misinformed on the purpose and state of the Project.
- 5) Pursuant to Rule 22.02 of the Board’s *Rules of Practice and Procedure* (“Rules”), to be granted intervenor status, the party seeking status must satisfy the Board that they have a

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<sup>1</sup> See Attached, Schedule 1.

“substantial interest [...] in the proceeding.” In demonstrating a “substantial interest” the applicant must describe:

- a) the intervenor and, as applicable, its membership;
  - b) the interest of the intervenor in the proceeding; and
  - c) the grounds for intervention.<sup>2</sup>
- 6) The Board has stated that it approaches the process for assessing applications for intervenor status based on “the facts of each application”.<sup>3</sup>
- 7) Firstly, VECC’s request to intervene is deficient under Rule 22.02. In Paragraph 10, “Grounds for the Intervention” of their request to intervene, VECC fails to mention their members’ interests and instead states:

In a letter of January 6, 2019 Enbridge Gas provided notice of its interest in providing natural gas service to the North Shore Communities. No process for the designation of the franchise has been announced by the Ontario Energy Board.

- 8) This is incorrect. Enbridge Gas Inc. (“Enbridge”) concluded its interest approximately eight months ago, on February 4, 2019, and the Board made a declaration regarding the competitive process shortly thereafter. Moreover, interest in a past procedural matter is not a reasonable ground to intervene under Rule 20.02.
- 9) Enbridge concluded its interest in the Project following notice that its application was deficient. The correct timeline following the Board’s request for interest according to the Board’s December 20, 2018 correspondence (“Notice Letter”) is as follows:
- a) On January 16, 2019, Enbridge filed a letter with the OEB registering its interest in providing natural gas service to the Municipalities;
  - b) On January 23, 2019, the Municipalities filed a letter with the OEB, submitting that Enbridge did not provide the minimum information required in the Notice Letter, nor did Enbridge confirm that it is “currently developing a plan” to provide service to the Municipalities;
  - c) On February 4, 2019, Enbridge formally withdrew its intention to provide services, stating that it would not compete to serve the North Shore Communities;<sup>4</sup>

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<sup>2</sup> Ontario Energy Board Rules of Process and Procedure, Rules 22.02 and 22.03, See Attached, Schedule 2.

<sup>3</sup> Kitchener-Wilmot Hydro Inc., “Application for electricity distribution rates and other charges beginning January 1, 2020” Procedural Order No. 1 - EB-2019-0049, June 20, 2019, See Attached, Schedule 3.

<sup>4</sup> Enbridge Letter, February 4, 2019, EB-2018-0329, See Attached, Schedule 4.

- d) On March 13, 2019, the Board issued a notice to the Municipalities stating that due to Enbridge's withdrawal, the Board would not undertake a competitive process with respect to the provision of natural gas service to the Municipalities.<sup>5</sup>
  - e) From April 2019 to June 2019, the Municipalities implemented a comprehensive public consultation program, specifically identifying NLNG as the gas supplier. The consultation program allowed interested or potentially affected parties to provide input into the Application. Considerable input was evaluated and integrated into the Application.
  - f) At the same time, the representatives of the Municipalities and NLNG engaged in consultation with First Nation and Métis communities. Three letters of support for the Application were provided from the Red Rock Indian Band, Bingwi Neyaashi Anishanaabe and Biigtigong Nishnaabeg First Nations.
  - g) On August 15, 2019, the Municipalities submitted the Application.<sup>6</sup> The submission date was originally June 28, 2019. The submission date was delayed to afford the Municipalities and other interested parties the opportunity to provide input to the Project and where feasible, integrate their feedback into the Project design.
  - h) On August 16, 2019, the Board completed its preliminary review of the Application and published the Application on the Board's web site. The Application includes a comprehensive gas supply plan, incorporates input gathered through the public engagement process, discloses the precise terms and conditions of the proposed LNG supply contract with NLNG, and specifically request orders approving various steps required to implement the Board's franchising model.
- 10) As the above makes clear, a considerable amount of consultation, opportunity for expressions of interest, and input from affected citizens has taken place. VECC's suggestion that Enbridge's early and very brief interaction with the Proceeding should create a ground for its intervention mischaracterizes the issues which are before the Board.
- 11) Second, VECC appears to overlook the fact that the Application is a request for leave to construct the Project, and is not an energy rates hearing. This mischaracterization of the Project and its progress is especially troubling. Considerable progress has been made to provide more reasonable energy costs to the Municipalities' citizens, and any delay will only serve to increase costs on the very people VECC works to protect.
- 12) The citizens of the Municipalities and the surrounding indigenous peoples have been, and continue to be, forced to pay for high energy costs. This is the principal purpose of the Municipalities' years of work to consult on, collectively plan, and ultimately deliver a truly unique solution to a population that has been traditionally isolated from cost-effective energy. The various letters of support filed with the Application support this assertion.

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<sup>5</sup> Board Notice dated March 13, 2019, EB-2018-0329, See Attached, Schedule 5.

<sup>6</sup> Corporation of the Town of Marathon, North Shore LNG Project Application – EB-2018-0329, August 15, 2019, See Attached, Schedule 6.



- 13) While VECC is a strong advocate for their members, granting them intervenor status in this Proceeding would only serve to open the door for Enbridge and their related parties to re-litigate previously-settled issues. The Board's procedures establish an orderly and fair process which should not be ignored. Moreover, VECC has yet to demonstrate that any of their members reside in or near the Municipalities.
- 14) VECC's self-insertion into this matter is not required in this specific case. Unfortunately, VECC's intervention at this stage will almost certainly have a negative effect on energy prices for the very individuals VECC seeks to protect due to delay and re-litigation of past, settled, procedural matters.

**Objection to the Request for Cost Eligibility**

- 15) In the event that the Board grants VECC intervenor status, NLNG also objects to VECC's request for cost eligibility under the Board's Practice Direction on Cost Awards ("Practice Direction").
- 16) VECC relies on the powers in the Rules and Section 3.03 of the Practice Direction to suggest that it meets the eligibility criteria for a costs award.
- 17) VECC may have an argument for cost awards when intervening on energy rates cases, especially in Ontario's metropolitan areas. However, NLNG submits that in the current proceeding, VECC should not be awarded costs for the following reasons:
- a) VECC does not represent the direct interests of the Municipalities' citizens with regards to the services offered by NLNG and the Municipalities and therefore does not meet the Board's cost eligibility requirement under section 3.03(a) of the Practice Direction.
  - b) VECC has failed to demonstrate that their focus on energy rates and rents is warranted in the context of a project approval.
  - c) Lastly, the Project is funded for and on behalf of the Municipalities. Any costs awards granted in this Application will ultimately be funded entirely by this small group of customers.

If you have any questions or concerns, please do not hesitate to contact the undersigned at 403-232-9656.

Yours truly,

**BORDEN LADNER GERVAIS LLP**

  
Alan L. Ross

Assistant: Alexandra Cabral  
Direct Line: (403) 232-9797  
Email: [acabral@blg.com](mailto:acabral@blg.com)  
cc: client

LIST OF SCHEDULES

**Schedule 1:** Nipigon LNG Corporation Intervenor Request, September 27, 2019 - EB-2018-0329

**Schedule 2:** Ontario Energy Board Rules of Process and Procedure, Rules 22.02 and 22.03

**Schedule 3:** Kitchener-Wilmot Hydro Inc., "Application for electricity distribution rates and other charges beginning January 1, 2020" Procedural Order No. 1, June 20, 2019 - EB-2019-0049

**Schedule 4:** Enbridge Letter, February 4, 2019, EB-2018-0329

**Schedule 5:** Board Notice dated March 13, 2019, EB-2018-0329

**Schedule 6:** Corporation of the Town of Marathon North Shore LNG Project Application, August 15, 2019 – EB-2018-0329

Nipigon LNG Corporation

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**Schedule 1**

**Nipigon LNG Corporation Intervenor Request, September 27, 2019 - EB-2018-0329**

Alan L. Ross  
T (403) 232-9656  
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Borden Ladner Gervais LLP  
Centennial Place, East Tower  
1900, 520 - 3rd Ave SW  
Calgary, AB, Canada T2P 0R3  
T 403.232.9500  
F 403.266.1395  
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September 27, 2019

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Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, Ontario M4P 1E4

**Attention: Kirsten Walli  
Board Secretary**

Dear Madam:

**Re: EB-2018-0329 – 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”) – Request for Intervention by Nipigon LNG Corporation (“NLNG”) in its capacity as the general partner of Nipigon LNG LP**

We act as counsel to NLNG in respect of the above matter. Pursuant to the Notice issued by the Ontario Energy Board (“Board”) on September 12, 2019, NLNG is writing to formally request intervenor status in Board proceeding EB-2018-0329 (the “Proceeding”).

NLNG is a corporation incorporated pursuant to the laws of the Province of Ontario. NLNG is the general partner of Nipigon LNG LP, a special purpose limited partnership that has developed the Nipigon LNG Project (the “LNG Project”). As part of the LNG Project, NLNG is in the process of constructing an LNG plant in the unincorporated Township of Ledger, as well as an approximate 500-metre connecting pipeline for the purpose of obtaining gas from the TransCanada Mainline for liquefaction at the LNG plant. The LNG Project is the preferred supply option contemplated by the Municipalities’ Application. Construction of the LNG Project is expected to begin in October 2019 and be completed by October 2020.

As the counterparty to a proposed long-term gas service contract (the “Contract”), NLNG has a directly affected interest in the relief sought in the Proceedings, including, without limitation, the pre-approval of the cost consequences of the Contract, and the issuance of certificates of public convenience and necessity to permit the as yet to be formed Utilities to distribute gas to each of the Municipalities.

NLNG reserves its right to be heard in English, to appear by or with counsel, and to participate in all aspects of the Proceeding including evidence, interrogatories, cross-examination, and argument.

NLNG requests that the OEB proceed with this application by way of a written hearing, and submits that a written process is appropriate given the narrow scope of the matters in issue.

NLNG does not expect to seek cost awards for the Proceeding.

NLNG requests that further communications and copies of all documents filed or issued in connection with this Proceeding be sent to the following:

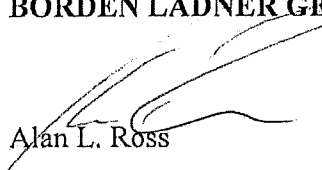
**Attention: Mr. Alan L. Ross**  
**Borden Ladner Gervais LLP**  
1900, 520 – 3rd Ave SW  
Calgary, AB T2P 0R3  
Tel: 403-232-9656  
Fax: 403-266-1395  
Email: aross@blg.com

**Attention: Mr. Joshua Samuel**  
**President, Nipigon LNG Corporation**  
150 Connie Crescent, Unit 4  
Concord, Ontario L4K 1L9  
Tel: 416-848-1165  
Email: jsamuel@northeastmidstream.com

If you have any questions or concerns, please do not hesitate to contact the undersigned at 403-232-9656.

Yours truly,

**BORDEN LADNER GERVAIS LLP**



Alan L. Ross

Assistant: Alexandra Cabral  
Direct Line: (403) 232-9797  
Email: acabral@blg.com



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**Schedule 2**

**Ontario Energy Board Rules of Process and Procedure, Rules 22.02 and 22.03**

# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012, January 17, 2013, April 24, 2014 and October 28, 2016)

- 20.02 A party may by motion seek leave to discontinue participation in a proceeding at any time before a final decision.
- 20.03 The Board may impose conditions on any withdrawal or discontinuance, including costs, as it considers appropriate.
- 20.04 Any fee paid to commence the proceeding by an applicant seeking to withdraw under **Rule 20.01** shall not be refunded.
- 20.05 If the Board has reason to believe that a withdrawal or discontinuance may adversely affect the interests of any party or may be contrary to the public interest, the Board may hold or continue the hearing, or may issue a decision or order based upon proceedings to date.

## 21. Notice

- 21.01 Any notices required by these Rules or a Board order shall be given in writing, unless the Board directs otherwise.
- 21.02 The Board may direct a party to give notice of a proceeding or hearing to any person or class of persons, and the Board may direct the method of providing the notice.
- 21.03 Where a party has been directed to serve a notice under this Rule, the party shall file an affidavit or statement of service that indicates how, when, and to whom service was made.

## 22. Intervenor Status

- 22.01 Subject to **Rule 22.05** and except as otherwise provided in a notice or procedural order issued by the Board, a person who wishes to actively participate in the proceeding shall apply for intervenor status by filing and serving a letter of intervention by the date provided in the notice of the proceeding.
- 22.02 The person applying for intervenor status must satisfy the Board that he or she has a substantial interest and intends to participate actively and responsibly in the proceeding by submitting evidence, argument or interrogatories, or by cross-examining a witness.
- 22.03 Every letter of intervention shall contain the following information:

# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012, January 17, 2013, April 24, 2014 and October 28, 2016)

- (a) a description of the intervenor, its membership, if any, the interest of the intervenor in the proceeding and the grounds for the intervention;
- (b) in the case of a frequent intervenor, an attached document describing the intervenor, its mandate and objectives, membership, if any, the constituency represented, the types of programs or activities carried out, and the identity of their authorized representative in Board proceedings, unless such a document was otherwise filed within the previous 12 month period;
- (c) subject to **Rule 22.04**, a concise statement of the nature and scope of the intervenor's intended participation;
- (d) a request for the written evidence, if it is desired;
- (e) an indication as to whether the intervenor intends to seek an award of costs;
- (f) if applicable, the intervenor's intention to participate in the hearing using the French language; and
- (g) the full name, address, telephone number, and email address, of no more than two representatives of the intervenor, including counsel, for the purposes of service and delivery of documents in the proceeding.

Subsection (b) applies to letters of intervention filed after June 1, 2014.

22.04 Where, by reason of an inability or insufficient time to study the document initiating the proceeding, a person is unable to include any of the information required in the letter of intervention under **Rule 22.03(b)**, the person shall:

- (a) state this fact in the letter of intervention initially filed; and
- (b) refile and serve the letter of intervention with the information required under **Rule 22.03(b)** within 15 calendar days of receipt of a copy of any written evidence, or within 15 calendar days of the filing of the letter of intervention, or within 3 calendar days after a

# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012, January 17, 2013, April 24, 2014 and October 28, 2016)

proposed issues list has been filed under **Rule 28**, whichever is later.

- 22.05 A person may apply for intervenor status after the time limit directed by the Board by filing and serving a notice of motion and a letter of intervention that, in addition to the information required under **Rule 22.03**, shall include reasons for the late application.
- 22.06 The Board may dispose of a motion under **Rule 22.05** with or without a hearing.
- 22.07 A party may object to a person applying for intervenor status by filing and serving written submissions within 5 business days of being served with a letter of intervention.
- 22.08 The person applying for intervenor status may make written submissions in response to any submissions filed under **Rule 22.07**.
- 22.09 The Board may grant intervenor status on conditions it considers appropriate.

## **23. Public Comment**

- 23.01 Except as otherwise provided in a notice or procedural order issued by the Board, a person who does not wish to be a party in a proceeding, but who wishes to communicate views to the Board, shall file a letter of comment.
- 23.02 The letter of comment shall include the nature of the person's interest, the person's full name, mailing address, email address and telephone number.
- 23.03 Before the record of a proceeding is closed, the applicant in the proceeding must address the issues raised in letters of comment by way of a document filed in the proceeding.
- 23.04 In any proceeding, the Board may make arrangements to receive oral comment on the record of the proceeding.

# **ONTARIO ENERGY BOARD**

## **Rules of Practice and Procedure**

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012,  
January 17, 2013, April 24, 2014 and October 28, 2016)

23.05 A person who makes an oral comment shall not do so under oath or affirmation and shall not be subject to cross-examination, unless the Board directs otherwise.

### **24. Adjournments**

24.01 The Board may adjourn a hearing on its own initiative, or upon motion by a party, and on conditions the Board considers appropriate.

24.02 Parties shall file and serve a motion to adjourn at least 10 calendar days in advance of the scheduled date of the hearing.

## **PART IV - PRE-HEARING PROCEDURES**

### **25. Technical Conferences**

25.01 The Board may direct the parties to participate in technical conferences for the purposes of reviewing and clarifying an application, an intervention, a reply, the evidence of a party, or matters connected with interrogatories.

25.02 The technical conferences may be transcribed, and the transcription, if any, shall be filed and form part of the record of the proceedings.

### **26. Interrogatories**

26.01 In any proceeding, the Board may establish an interrogatory procedure to:

- (a) clarify evidence filed by a party;
- (b) simplify the issues;
- (c) permit a full and satisfactory understanding of the matters to be considered; or
- (d) expedite the proceeding.

26.02 Interrogatories shall:

- (a) be directed to the party from whom the response is sought;



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**Schedule 3**

**Kitchener-Wilmot Hydro Inc., "Application for electricity distribution rates and other charges beginning January 1, 2020" Procedural Order No. 1, June 20, 2019 - EB-2019-0049**

**Kitchener-Wilmot Hydro Inc.**

**Application for electricity distribution rates and other  
charges beginning January 1, 2020**

**PROCEDURAL ORDER NO. 1**

**June 20, 2019**

Kitchener-Wilmot Hydro Inc. (Kitchener-Wilmot Hydro) filed a cost of service application with the Ontario Energy Board (OEB) on April 30, 2019 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that Kitchener-Wilmot Hydro charges for electricity distribution, to be effective January 1, 2020.

A Notice of Hearing was issued on May 16, 2019.

Each of Distributed Resource Coalition (DRC), Energy Probe Research Foundation (Energy Probe), School Energy Coalition (SEC) and Vulnerable Energy Consumers Coalition (VECC) applied for intervenor status and cost eligibility.

**Intervention Requests**

Kitchener-Wilmot Hydro filed a letter objecting to DRC's request for intervenor status and cost eligibility. DRC responded to the objection.

In its Letter of Intervention, DRC describes itself as a group of electricity customers and consumers that consists of end-use residential customers, non-profit organizations, and owners' associations that are directly affected by and interested in the following:

- (i) optimizing existing energy assets
- (ii) efficiently facilitating the integration of existing and innovative Distributed Energy Resources (DERs), including electric vehicles, to achieve customer and grid solutions

- (iii) providing input on direct customer needs and local distribution company opportunities relating to DERs

DRC states that if accepted as an intervenor, it would focus on the following issues:

- Connection of DERs to the electricity grid
- DERs as a reliability resource for Kitchener-Wilmot Hydro
- Integration of DERs into local distribution system planning and related operations, maintenance, and administration (OM&A) considerations
- DER considerations for rate design
- DER considerations for cost allocation

In its Letter of Intervention, DRC states that its members in connection with this proceeding are Kitchener-Wilmot Hydro customers that include, subject to further update, the Electric Vehicle Society (end-use electric vehicle electricity customers) and Plug'n Drive. DRC states that it hopes to provide the OEB with a unique perspective that is absent, that of DER residential customers, as well as DER-related non-profit organizations, owners and developers.

Kitchener-Wilmot Hydro objected to DRC's request for intervenor status stating that DRC had failed to demonstrate that any of its members are customers of Kitchener-Wilmot Hydro. Kitchener-Wilmot Hydro also objected to DRC's request for cost eligibility on grounds that DRC represents the commercial interests of its members and not the direct interest of ratepayers.

DRC responded to the objection by stating that the Electric Vehicle Society's chapter in the Kitchener-Wilmot Hydro service territory is the Waterloo Region Electric Vehicle Association (WREVA). DRC states that the membership of WREVA includes Kitchener-Wilmot Hydro customers that own electric vehicles.

DRC's response to the objection also states that "Plug'n Drive is a Canada-wide non-profit organization whose policy mandate to accelerate the adoption of EVs in order to maximize their environmental and economic benefit is not limited to North York, Ontario, where its head office is located. EVS and Plug'n Drive are each highly active and engaged in the Kitchener-Wilmot Hydro service territory and have recently hosted local events in the region."

These events include National Drive Electric Week and an electric vehicle information day for customers in the region. WREVA has hosted an electric vehicle information day and plans to host future events in the service territory.

### The Substantial Interest Test

Rule 22 of the OEB's *Rules of Practice and Procedure* requires that an entity seeking intervenor status must have a "substantial interest" in the proceeding. DRC takes the position that it has a direct and substantial interest in the proceeding in that its members are directly affected by the rates, services and approaches being proposed in the rate application.

Whether an intervenor has a substantial interest is determined based on the facts of each application. Therefore, the fact that an intervenor has been accepted in a previously heard application may be instructive, but it does not create a precedent for an intervenor having a substantial interest in a different application. An assessment of whether a substantial interest exists is undertaken for each application.

### Policy Interest

Based on the information provided by DRC, it appears that Plug'n Drive seeks to bring a policy perspective to this rate application. DRC states that "Plug'n Drive is a non-profit organization whose policy mandate is to accelerate the adoption of EVs in order to maximize their environmental and economic benefit."

The policy issues DRC seeks to advance are more appropriately considered in a policy consultation and not Kitchener-Wilmot Hydro's rate application. The OEB has previously determined that a rates case is not the forum by which to develop broad policy directions for DERs<sup>1</sup>.

On March 15, 2019, the OEB launched a policy initiative entitled "Responding to Distributed Energy Resources (DERs)", (EB-2018-0288). The consultation states that its purpose is to develop a more comprehensive regulatory framework that facilitates investment and operation of DERs on the basis of value to consumers and supports effective DER integration so the benefits of sector evolution can be realized. DRC has applied to be an intervenor in that policy consultation.

### Substantial Interest

This leaves for consideration the participation of the Waterloo Region Electric Vehicle Association (WREVA). It is not clear, based on the information provided, the extent to which this group is comprised of end-use customers of Kitchener-Wilmot Hydro.

In addition, the intervention request does not address specific items that will be examined in relation to Kitchener-Wilmot Hydro's capital plan or OM&A expenditures. The letter of intervention speaks to "optimizing existing assets" and "facilitating

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<sup>1</sup> EB-2018-0165, Decision on Appeal, dated December 14, 2018

integration of DERs”, as well as speaking to the benefits of DER, but there are no details provided specific to the application that the OEB has before it. It should be noted that the Kitchener-Wilmot Hydro rate application does not contain a specific EV customer rate.

Based on a review of the contents of the Kitchener-Wilmot Hydro application, and absent specific details on the part of DRC, it is not clear that DRC has a substantial interest in this application.

For the above reasons, DRC is denied intervenor status in this rate application.

Energy Probe, SEC and VECC are approved as intervenors. Energy Probe, SEC and VECC are eligible to apply for an award of costs under the OEB's *Practice Direction on Cost Awards*. The list of parties in this proceeding is attached as Schedule A to this Procedural Order.

Cost eligible intervenors should be aware that the OEB will not generally allow the recovery of costs for the attendance of more than one representative of any party, unless a compelling reason is provided when cost claims are filed.

### **Confidentiality**

By the letter dated April 30, 2019 and pursuant to the OEB's *Rules of Practice and Procedure* and the OEB's *Practice Direction on Confidential Filings*, Kitchener-Wilmot Hydro requested confidential treatment for certain information in the following documents:

- Personal information contained in PILs income tax returns for 2017
  - Exhibit 4, Appendix 4-5
- Information on third parties engaged in competitive business activities
  - Exhibit 2, Appendix 2-3 (Distribution System Plan) – CIS Replacement Business Case dated April 2019
  - Exhibit 4, Appendix 4-7 – Bill and Mail Processing Outsourcing Proposal dated March 19, 2017

In accordance with the OEB's *Practice Direction on Confidential Filings*, Kitchener-Wilmot Hydro has provided reasons for the confidentiality request, including reasons why public disclosure of the information would be contrary to the *Freedom of Information and Protection of Privacy Act*, and why public disclosure of the information would be injurious to the financial interest of the third parties identified in the documents.



At this time, provision will be made for the filing of submissions on Kitchener-Wilmot Hydro's request for confidentiality. Counsel and consultants for intervenors that wish to make submissions on the request for confidentiality shall be granted access to the un-redacted documents provided they have executed the OEB's Declaration and Undertaking. The signed Declaration and Undertaking shall be filed with the OEB and a copy shall be delivered to Kitchener-Wilmot Hydro. If Kitchener-Wilmot Hydro objects to a Declaration and Undertaking, the objection shall be filed with the OEB and copied to the relevant party within **5 days** from the receipt of the Declaration and Undertaking. The relevant party shall file its reply, if any, with the OEB and deliver a copy to Kitchener-Wilmot Hydro, within **5 days** from the receipt of the objection.

### Issues List

It is the OEB's expectation that parties will be best positioned to identify issues relevant to Kitchener-Wilmot Hydro's application after the applicant has responded to interrogatories. Kitchener-Wilmot Hydro, OEB staff and the intervenors shall develop and OEB staff shall file a proposed issues list for the OEB's consideration. The OEB will approve an issues list prior to the settlement conference.

### Interrogatories

At this time, provision will be made for written interrogatories. The OEB will review the single test year application both in the context of the projects and programs that are requested for the test year and from the perspective of the distributor's plans for the subsequent four years until the next scheduled rebasing application.

Parties should examine the value presented by the proposed investments as opposed to focussing only on the costs. Parties should also assess the fit between the applicant's plans and its stated objectives, and consider how the plans contribute to positive outcomes for customers, in particular those outcomes that arise from the asset management decisions reflected in the applicant's distribution system plan. The OEB will consider the entire five year distribution system plan to assess the planning and pacing proposals of the applicant and whether the test year requests are appropriately aligned with the distribution system plan. The OEB will also consider productivity and benchmarking results in assessing cost forecasts, bill impacts and distributor performance.

Parties should not engage in detailed exploration of items that do not appear to be material. Parties should use the materiality thresholds documented in Chapter 2 of the Filing Requirements as a guide. In making its decision on cost awards, the OEB will consider whether intervenors made reasonable efforts to ensure that their participation in the hearing was focused on material issues.

Parties should consult sections 26 and 27 of the OEB's *Rules of Practice and Procedure* regarding required naming and numbering conventions and other matters related to interrogatories.

It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

**IT IS THEREFORE ORDERED THAT:**

1. OEB staff and intervenors who wish to make written submissions on Kitchener-Wilmot Hydro's confidentiality requests shall file such submissions with the OEB, and serve them on Kitchener-Wilmot Hydro and all other intervenors, by **June 25, 2019**.
2. If Kitchener-Wilmot Hydro wishes to respond to any of the submissions, the reply submission shall be filed with the OEB and served on all intervenors by **June 28, 2019**.
3. OEB staff and intervenors shall request any relevant information and documentation from Kitchener-Wilmot Hydro that is in addition to the evidence already filed, by written interrogatories filed with the OEB and served on all parties by **July 5, 2019**.
4. Kitchener-Wilmot Hydro shall file with the OEB complete written responses to all interrogatories and serve them on all intervenors by **July 25, 2019**.
5. OEB staff shall file a proposed issues list, or, alternatively, shall advise the OEB in writing that the parties and OEB staff have been unable to reach an agreement on a draft issues list by **August 7, 2019**.
6. A settlement conference among the parties and OEB staff will be convened on **August 14, 2019** starting at **9:30 a.m., at 2300 Yonge Street, 25th floor, Toronto**. If necessary, the settlement conference will continue on **August 15 and 16, 2019**.
7. Any settlement proposal arising from the settlement conference shall be filed with the OEB on or before **September 10, 2019**. In addition to outlining the terms of any settlement, the settlement proposal should contain a list of any unsettled issues, indicating with reasons whether the parties believe those issues should be dealt with by way of oral or written hearing.

8. Any submission from OEB staff on a settlement proposal shall be filed with the OEB and served on all parties by **September 17, 2019**.
9. If there is no settlement proposal arising from the settlement conference, Kitchener-Wilmot Hydro shall file a statement to that effect with the OEB by **August 30, 2019**. In that event, parties shall file and serve on the other parties by **September 10, 2019** any submissions on which issues shall be heard in writing, and for which issues the OEB should hold an oral hearing.

All filings to the OEB must quote the file number, **EB-2019-0049**, be made in searchable/unrestricted PDF format electronically through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.oeb.ca/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a USB memory stick in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Registrar at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Donald Lau at [Donald.Lau@oeb.ca](mailto:Donald.Lau@oeb.ca) and OEB Counsel, Lawren Murray at [Lawren.Murray@oeb.ca](mailto:Lawren.Murray@oeb.ca).

### **ADDRESS**

Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto ON M4P 1E4  
Attention: Registrar

Email: [boardsec@oeb.ca](mailto:boardsec@oeb.ca)  
Tel: 1-888-632-6273 (Toll free)  
Fax: 416-440-7656

**DATED** at Toronto, **June 20, 2019**

**ONTARIO ENERGY BOARD**

**By delegation, before: Christine E. Long**

*Original signed by*

Christine E. Long  
Registrar  
Office of the Registrar

**SCHEDULE A**

**LIST OF APPLICANT AND INTERVENORS**

**KITCHENER-WILMOT HYDRO INC.**

**EB-2019-0049**

**JUNE 20, 2019**



Kitchener-Wilmot Hydro Inc.  
EB-2019-0049

**APPLICANT & LIST OF INTERVENORS**

June 20, 2019

**APPLICANT**

**Rep. and Address for Service**

**Kitchener-Wilmot Hydro Inc.**

**Margaret Nanninga**

Vice President Finance & Chief Financial Officer  
Kitchener-Wilmot Hydro Inc.  
301 Victoria Street S.  
Kitchener, ON N2G 4L2

Tel: 519-749-6177  
Fax: 519-745-2360  
[mnanninga@kwhydro.ca](mailto:mnanninga@kwhydro.ca)

**Jerry Van Ooteghem**

President & Chief Executive Officer  
Kitchener-Wilmot Hydro Inc.  
301 Victoria Street  
P.O. Box 9010  
Kitchener ON N2G 4L2  
Tel: 519-749-6180 Ext: 280  
Fax: 519-571-9338  
[jvanooteghem@kwhydro.ca](mailto:jvanooteghem@kwhydro.ca)

**APPLICANT COUNSEL**

**John Vellone**

Partner  
Borden Ladner Gervais LLP  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto ON M5H 4E3  
Tel: 416-367-6730  
Fax: 416-367-6749  
[jvellone@blg.com](mailto:jvellone@blg.com)

**APPLICANT & LIST OF INTERVENORS**

June 20, 2019

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**INTERVENORS**

**Rep. and Address for Service**

**Energy Probe Research  
Foundation**

**Tom Ladanyi**

TL Energy Regulatory Consultants Inc.  
41 Divadale Drive  
Toronto ON M4G 2N7  
Tel: 416-423-3685  
[tom.ladanyi@rogers.com](mailto:tom.ladanyi@rogers.com)

**Roger Higgin**

SPA Inc.  
15 Malabar Place  
Don Mills ON M3B 1A4  
Tel: 416-391-0738  
[spainc@rogers.com](mailto:spainc@rogers.com)

**School Energy Coalition**

**Wayne McNally**

SEC Coordinator  
Ontario Education Services Corporation  
c/o Ontario Public School Boards Assoc.  
439 University Ave. 18th Floor  
Toronto ON M5G 1Y8  
Tel: 416-340-2540  
Fax: 416-340-7571  
[wmcnally@opsba.org](mailto:wmcnally@opsba.org)

**APPLICANT & LIST OF INTERVENORS**

June 20, 2019

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**School Energy Coalition**

**Jay Shepherd**  
Counsel  
Shepherd Rubenstein Professional Corporation  
2200 Yonge St.  
Suite 1302  
Toronto ON M4S 2C6  
Tel: 416-804-2767  
Fax: 416-483-3305  
[jay@shepherdrubenstein.com](mailto:jay@shepherdrubenstein.com)

**Mark Rubenstein**  
Counsel  
Shepherd Rubenstein Professional Corporation  
2200 Yonge St.  
Suite 1302  
Toronto ON M4S 2C6  
Tel: 647-483-0113  
Fax: 416-483-3305  
[mark@shepherdrubenstein.com](mailto:mark@shepherdrubenstein.com)

**Vulnerable Energy  
Consumers Coalition**

**Mark Garner**  
Project Manager  
647 Broadway Avenue  
Toronto ON M4G 2S8  
Tel: 647-408-4501  
[markgarner@rogers.com](mailto:markgarner@rogers.com)

**Bill Harper**  
Consultant  
107 Baker Ave.  
Richmond Hill On L4C 1X5  
Tel: 416-348 0193  
[bharper.consultant@bell.net](mailto:bharper.consultant@bell.net)

Kitchener-Wilmot Hydro Inc.  
EB-2019-0049

**APPLICANT & LIST OF INTERVENORS**

June 20, 2019

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**John Lawford**  
Counsel, Regulatory and Public Policy  
Public Interest Advocacy Centre  
2-285 McLeod Street  
Ottawa ON K2P 1A1  
Tel: 613-562-4002 Ext: 25  
[jlawford@piac.ca](mailto:jlawford@piac.ca)

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**Schedule 4**

**Enbridge Letter, February 4, 2019, EB-2018-0329**





Enbridge  
50 Kell Drive N.  
Chatham, Ontario, Canada  
N7M 5M1

February 4, 2019

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: EB-2018-0329 –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 North Shore Communities”) – Enbridge Gas Inc. (“Enbridge Gas”) correspondence**

Enbridge Gas (formerly Union Gas Ltd (“Union”) and Enbridge Gas Distribution (“EGD”)) is writing in response to the letter submitted by The Corporation of the Town of Marathon (“Marathon”) to the Ontario Energy Board (the “Board”) on January 23, 2019 in which Marathon responded to a January 16, 2019 letter filed by Enbridge Gas with the Board in relation to the Board’s December 20, 2018 request for intention to provide distribution service.

In its January 16, 2019 letter, Enbridge Gas indicated to the Board that the request for intentions to serve the North Shore Communities was premature. In particular, Enbridge Gas stated that *“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 statement assumed that funding support is required for the project to progress. It was Enbridge Gas’ understanding that the project’s economic viability may be dependent on funding or cross subsidization as contemplated in Bill 32, now the *Access to Natural Gas Act (“ANG Act”)*.

However, in its letter of January 23, 2019, Marathon stated at Section 3.1 that Enbridge Gas’ statement is incorrect and that *“The Municipalities established the economic feasibility of the North Shore Project in 2016, more than two years before Bill 32 was contemplated in 2018.”*

Further, Enbridge Gas understands that the North Shore Communities are receiving funding directly from the government and that feasibility of the project is not dependent

on the ANG Act funding. Accordingly, Enbridge Gas, not wanting to cause delay in the project, will not compete to serve the North Shore Communities.

Should you have any questions on the above, please contact me at 519-436-5473.

Yours truly,

[original signed by]

Karen Hockin P. Eng.  
Specialist, Regulatory Initiatives  
Enbridge Gas Inc.

cc. Charles Keizer, Torys  
Mark Kitchen, Enbridge Gas Inc.  
Daryl Skworchinski, Town of Marathon

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**Schedule 5**

**Board Notice dated March 13, 2019, EB-2018-0329**



Ontario  
Energy  
Board | Commission  
de l'énergie  
de l'Ontario

**BY E-MAIL**

March 13, 2019

Daryl Skworchinski  
Chief Administrative Officer and Clerk  
The Corporation of the Town of Marathon  
4 Hemlo Drive, P.O. Bag TM  
Marathon ON P0T 2E0  
[clerk@marathon.ca](mailto:clerk@marathon.ca)

Dear Mr. Skworchinski:

**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  
Ontario Energy Board File Number EB-2018-0329**

Under cover of a letter dated December 4, 2018, the Town of Marathon (Town), on its own behalf and as representative of the Township of Manitouwadge, the Township of Schreiber, the Township of Terrace Bay and the Municipality of Wawa (Municipalities), filed with the Ontario Energy Board (OEB) a notice of intent to file an application by June 28, 2019 to provide natural gas distribution services within the Municipalities.

On December 20, 2018, the OEB issued a letter requesting that any other party that is currently developing a plan to provide natural gas services to the Municipalities file a letter including certain enumerated minimum information by January 16, 2019. Among the required minimum information was confirmation that the party is in a position to file a complete application with the OEB by June 28, 2019.

On January 16, 2019, Enbridge Gas Inc. (Enbridge) filed a letter with the OEB registering its interest in providing natural gas service to the Municipalities. No other expressions of interest were filed in response to the OEB's December 20, 2018 letter. In its letter, Enbridge stated that it is premature to be able to commit to filing a complete application by June 28, 2019 when key elements of such an application are yet to be determined. In particular, according to Enbridge the economic viability of any project, whether by Enbridge or the Town, cannot be determined until regulations under the *Access to Natural Gas Act, 2018* (formerly Bill 32) are issued and implemented.

On January 23, 2019, the Town filed a letter in response, requesting that the OEB disregard Enbridge's letter, stating that Enbridge did not provide the minimum information required by the OEB in its December 20, 2018 letter. Among other things, the Town stated that Enbridge's interest in serving the Municipalities is speculative and that the OEB should not delay its review of the Municipalities' application to accommodate the filing of any competitive application. The Town also stated that "the Municipalities established the economic feasibility of the North Shore Project in 2016, more than two years before Bill 32 was contemplated in 2018".

On February 4, 2019, Enbridge filed a letter stating that it would not compete to serve the Municipalities, as it understood from the Town's January 23, 2019 letter that the Municipalities are receiving funding directly from the government and that feasibility of the project is not dependent on funding under the *Access to Natural Gas Act, 2018*.

As Enbridge has withdrawn its expression of interest, the OEB does not expect to undertake a competitive process with respect to the provision of natural gas service to the Municipalities. The OEB therefore anticipates that it will proceed to review the Municipalities' application once it is filed. Please be aware, however, that the OEB may hold in abeyance any application to expand natural gas service that is contingent on or underpinned by third party funding, the receipt of which is not sufficiently certain.

Please do not hesitate to contact me should you have any questions.

Yours truly,

*Original signed by*

Christine E. Long  
Registrar  
Office of the Registrar

c: Karen Hockin, Enbridge Gas Inc.

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**Schedule 6**

**Corporation of the Town of Marathon North Shore LNG Project Application, August 15, 2019 –  
EB-2018-0329**

**Please Note:**

**This Schedule has been abridge to allow for electronic filing, hard copies are forthcoming.**



The Corporation of the Town of Marathon  
4 Hemlo Drive, P.O. Bag TM  
Marathon, Ontario P0T 2E0  
cao@marathon.ca  
Phone: (807) 229-1341  
Fax: (807) 229-1999  
www.marathon.ca

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**OFFICE OF THE CAO/CLERK**

**DELIVERED VIA RESS & COURIER**

August 15, 2019

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

Dear Ms. Walli:

**Re: Corporation of the Town of Marathon ("Corporation") North Shore LNG Project  
Application – EB-2018-0329**

Further to the Corporation's notice of intent to file an application for orders related to the expansion of natural gas service to the Town of Marathon, Township of Manitouwadge, Township of Schreiber, Township of Terrace Bay and Municipality of Wawa, filed December 3, 2018, enclosed please find an updated copy of the application, which requests the following:

- An order or orders approving a municipal franchise agreement for each Municipality, using the Ontario Energy Board's Model Franchise Agreement as a template;
- An order or orders granting a certificate of public convenience and necessity to supply natural gas within each Municipality;
- An order or orders for a leave to construct natural gas distribution works within each Municipality;
- An order or orders approving a form of easement agreements;
- An order or orders for a gas supply plan to serve each Municipality; and
- An order or orders providing pre-approval of the cost consequences of a long-term liquefied natural gas supply contract to serve each Municipality.

This application contains the following updates:

- Request for an order or orders approving a form of easement agreements (see Exhibit A, Tab 1, Schedule 2)
- Revised presentation of project cost information (see Exhibit A, Tab 9, Schedule 1)

Hard copies of the revisions will also be submitted.



respect. works here.

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This submission has been filed through the Ontario Energy Board's Regulatory Electronic Submission System and will be available on the Project website at <https://northshorenaturalgas.com>.

Yours truly,



Daryl Skworchinski  
CAO/Clerk  
Town of Marathon  
4 Hemlo Drive, PO Bag TM  
Marathon, ON P0T 2E0  
E-mail: [cao@marathon.ca](mailto:cao@marathon.ca)  
Telephone: +1 (807) 229-1340



respect. works here.