

October 3, 2019

VIA COURIER & RESS FILING

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

Dear Ms. Walli:

**Re: Corporation of the Town of Marathon;
North Shore LNG Project Application;
OEB File No.: EB-2018-0329**

We write on behalf of the Corporation of the Town of Marathon (“**Corporation**”) in its own capacity and as the representative of the Township of Manitouwadge, Township of Schreiber, Township of Terrace Bay and the Municipality of Wawa (together, the “**Applicants**”) and pursuant to Rule 22.07 of the Ontario Energy Board’s (“**OEB**” or “**Board**”) Rules of Practice and Procedure, to object to the requests of Certarus Ltd. (“**Certarus**”) and the Vulnerable Energy Consumers Coalition (“**VECC**”) for grants of intervenor status in the above-noted proceeding.

The Board should reject the requests of Certarus and VECC for intervenor status in this proceeding for the reasons set out below.

A. Certarus Intervention

1. *CNG supply ruled out as non-viable at early stage*

The gas supply and distribution project (“**Project**”) that underpins the North Shore LNG Project Application (“**Application**”) was conceived and initiated as a Liquefied Natural Gas (“**LNG**”) project. In October 2015, the Applicants partnered with LNG producer, Northeast Midstream LP (“**Northeast**”), to submit an application to the Northern Ontario Heritage Fund Corporation (“**NOHFC**”) for funding to assess the engineering, environmental and economic feasibility of developing a regional natural gas delivery system. Funding was subsequently received from NOHFC, allowing the completion of the feasibility work. The resulting preliminary feasibility study, entitled “North Shore Natural Gas Distribution Plan”, is included in the Application as Tab 9, Schedule 4, Attachment 1. Based on the positive results of this study, the Applicants applied for a grant under the NOHFC Strategic Economic Infrastructure Program, which helps regions and communities advance economic development opportunities and supports investment through strategic infrastructure. The Applicants applied for this grant in order to fund detailed engineering and design,

regulatory approvals and project management and administration for the North Shore LNG Project. In March 2018, the NOHFC approved a grant of \$3.45 million.

Non-LNG gas supply options were ruled out early in the project planning process for reasons having to do with availability and cost. A pipeline option, connecting the five communities with the TransCanada Mainline, was ruled out in the beginning because it was too costly, relative to the LNG supply option. As for a compressed natural gas (“**CNG**”) supply option, in March 2017 and after the preliminary feasibility work had been completed (see discussion above), the Corporation met with representatives of Union Gas to discuss the feasibility of purchasing CNG produced at Union Gas’ Liquefied Natural Gas Facility located in Hagar, Ontario, a 9.5 hour drive from Marathon. Ultimately, and after a preliminary economic analysis was completed by Union, both parties agreed that a Union CNG supply option was not viable for reasons related to reliability of supply and cost. At the time, there were no other operating CNG facilities in northern Ontario.

Subsequently, on November 21, 2017 and in response to an introductory e-mail from Certarus, representatives of the Corporation met with Mr. Nathan Ough, a Vice President of Certarus. By this point in time, development work on the Project was proceeding based on the assumption that the Project would rely on LNG. Nevertheless, the Corporation considered it prudent to meet with Mr. Ough in order to determine whether a viable and cost competitive alternative to the LNG option had become available since the time that the preliminary feasibility assessment had been completed. At the meeting, Mr. Ough advised that Certarus was in the final stages of permitting a large scale bulk CNG terminal on Highway 11, outside of Timmins and was investigating a second terminal in either Hearst or Thunder Bay. Importantly, however, Mr. Ough advised the Corporation that the Certarus business model did not contemplate supplying CNG for residential loads served by pipeline and was, instead, targeting commercial and industrial loads that could accept trucked delivery of CNG. This meant that CNG supply, purchased from Certarus, would not meet a critical project prerequisite, namely, the development of a regional natural gas pipeline system to serve the residential sector.

The Applicants do not know whether Certarus is now, in 2019, prepared to offer a residential CNG supply option at a competitive cost.¹ Even if it were willing to do so, it was not and is not incumbent upon the Applicants to put their LNG project “on hold” while Certarus develops and expands its business model to include a cost-competitive, residential CNG supply option. It is notable that Certarus has never provided the Applicants with any concrete information or hard data to support a CNG supply option. Indeed, Certarus waited until November 2017 to contact the Corporation for the first time, notwithstanding the fact that plans to develop a regional natural gas delivery system were well known and in the public realm, as early as 2015.

2. ***development work and application premised on LNG supply***

LNG and CNG are not fungible products and the development of an LNG-based system is quite different from the development of a CNG-based system. Leaving aside the reasons that caused the Applicants to rule out CNG in the first place, a switch to CNG at this late stage would require the Applicants to go back to the drawing board, re-design the project and re-do many of the required environmental, engineering,

¹ After the November 21, 2017 meeting, there was no further communication with Certarus until May 5, 2018, when Mr. Ough requested a “catch up”. Marathon agreed but never received a response from Certarus to set up the meeting. On September 17, 2018, Certarus (Stephane Gallant) contacted Marathon requesting a meeting the next day, on September 18th. Marathon’s representative was unavailable at this time. Mr. Gallant responded that he would be in touch the following week. However, Marathon did not hear from Certarus again, until September 2019.

siting and financial studies. Further, it would require the Applicants to re-engage with all of its stakeholders, including the 13 First Nations and Métis communities that were consulted about the Project, as originally conceived. The Applicants have neither the mandate nor the financial wherewithal to go down this path and a requirement to do so would signal the end of the Project.

3. ***Certarus acting with improper purpose***

Certarus seeks standing in this proceeding for an improper purpose, namely, an attempt to impose an unfeasible and unviable commercial arrangement on an unwilling party. Certarus is attempting to use the regulatory process to advance its own, private commercial interests, at the expense of the wider public interest; that is, the interests of the northern Ontario communities that stand to benefit from the provision of natural gas service in a timely, cost-effective, safe and reliable manner. Although Certarus states that its experience and technical expertise would assist the Board in determining matters of economic prudence and cost effectiveness, it is clear that its true intention is to gain a commercial advantage by attempting to convince the Board: (i) to reject the Applicant's LNG proposal in favour of a CNG-based system; or (ii) to require the Applicants to refile an Application that includes a CNG supply option. In either case, should Certarus prevail, the Applicant's good faith efforts to obtain the OEB approvals it requires in order to obtain financing, will have been obstructed and frustrated.

4. ***prejudice to Applicants and harm to communities with no off-setting benefits***

The prejudice to the Applicants and the harm to the communities that they represent would vastly outweigh the value or benefit, if any, that Certarus' participation in this proceeding would add. Although Certarus states that it takes no position on whether the Application should proceed by way of oral or written hearing, its stated intention to file written evidence about its proposed CNG solution and cross-examine the Applicants would, in all likelihood, lead to an oral hearing and, perhaps, require the Applicants to file reply evidence. All of this would increase the length of the proceeding and the attendant costs which, for the most part, would be borne by the Applicants who have very limited recourse to funds at this stage of the Project's development. Inevitably, the result would be a delay in the Project's in-service date and the loss of a heating season.

The negative consequences of increased costs and delay would not be offset, at all, by benefits associated with Certarus' participation. While the Applicants reject, as false, Certarus' unsupported assertion that a CNG-based system would yield \$20 million in operating cost savings over ten(10) years, the real point is that the CNG ship sailed nearly three years ago when the Applicants determined that the CNG supply option was not a viable option. At this point in the Project's development, it is not feasible to consider a CNG supply option. If the Applicants are required to do so, the Project will die. When considered in this light, a Certarus intervention serves no useful purpose.

For all of the reasons set out above, the Board should reject Certarus' request for intervenor status as being contrary to the public interest.

VECC Intervention

1. ***VECC has failed to demonstrate a material and valid interest in the Application***

VECC's intervention states that it comprises two organizations: the Federation of Metro Tenants Association ("**FMTA**") and the Ontario Coalition of Senior Citizens' Organizations ("**OCSCO**"). The FMTA

represents tenants in the City of Toronto. Its services are available “to all tenants in Toronto”² The FMTA does not represent tenants who live in the five communities that will be served by the Project or anywhere in northern Ontario for that matter.

The OCSCO’s website states that it is a provincial organization based in Toronto, representing 500,000 senior citizens across Ontario. The OCSCO’s website does not disclose the names of the senior citizen groups that comprise the coalition.

It is not clear how VECC would ascertain the views of OCSCO members who reside in the five communities or, indeed, the views of senior citizen residents in these communities, more generally. Given the nature of the Application and unlike an application for approval of distribution rates, there may be an array of views amongst the residents on the issue of whether the Project is the best way to deliver a natural gas solution to the communities or whether such a solution is required at all. It is unlikely that there is a commonality of views on these issues amongst the constituents that VECC seeks to represent.

The Applicants have gone to great lengths over the past four years to engage the residents of these five communities, including senior citizens, in order to solicit their input and views on the Project. An extensive consultation program was undertaken for the Project. The feedback received from stakeholders informed the Applicants’ decisions about the Project³. This was important because the Project is being advanced in order to serve the Applicants’ constituents. The Applicants, themselves, have no commercial agenda that would serve to override the wishes of their constituents.

In the result, the Applicants have a good appreciation of the issues facing residents (including senior citizens) in the communities that will be served by the Project and are in a far better position to represent their interests than a group that advocates for Toronto tenants and a coalition of senior citizen organizations and individuals whose nexus to the communities that will be served by the Project is unknown.

2. ***VECC has failed to demonstrate valid grounds for intervening***

The grounds for VECC’s intervention (in paragraph 10) and its interests in the Application (paragraph 11) are entirely negated by the following erroneous statements:

- *“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”*: By letter dated December 20, 2018, the Board requested that parties who were developing plans to provide natural gas to the Municipalities, file a letter providing information about such plans. By letter dated January 16, 2019, Enbridge Gas registered its expression of interest. By letter dated February 4, 2019, Enbridge Gas advised the Board that it was withdrawing its expression of interest and would not compete to serve the Municipalities, as it now understood that they would be funded directly from the government and that the feasibility of the Project was not dependent on funding under the *Access to Natural Gas Act 2018*. By letter dated March 13, 2019, the Board advised the Corporation that in light of Enbridge’s decision to withdraw its expression of interest, it did not expect to undertake a competitive process with respect to the provision of natural gas service.

² See https://www.torontotenants.org/sites/torontotenants.org/files/FMTA%20Pamphlet%20FINAL%20R1_0.pdf.

³ These consultation activities are described in Sections 3.2-3.4 of the Environmental Report for each Municipality (Tab 10, Schedule 1, Attachment 1).

- *“VECC is intervening in order to ensure that the interests of both existing and new natural gas consumer, particularly low-income consumers of natural gas are fully represented in the delivery of natural gas and the determination of just and reasonable rates for the service”*: The North Shore LNG Project will bring natural gas to consumers residing in the five communities for the first time. At this time, there are no existing natural gas consumers.
- *“This Application will have impact beyond the service of natural gas as it may also establish the means and regulatory rules under which proponents accessing the recently announced Natural Gas Expansion Support Program may establish greenfield natural gas service”*: This proceeding will not establish any means or regulatory rules pertaining to the Natural Gas Expansion Support Program because the Applicants have not and will not receive any funding from this program.
- *“VECC intends to scrutinize all aspects of the Applicant’s proposal and, if it should arise, the competitive response of other proponents including Enbridge Gas”*: Enbridge Gas withdrew its expression of interest on February 4, 2019 and the Board is not undertaking a competitive process with respect to the provision of natural gas source to the five communities. VECC states that it intends to scrutinize all aspects of the Application. It is difficult to understand the nature of VECC’s interest in the Applicant’s requests for orders approving municipal franchise agreements, granting a certificate of public convenience and necessity, granting leave to construct and approving a form of easement agreement.

In conclusion, the Applicants submit that VECC’s request for status as an intervenor in this proceeding should be rejected for the reasons set out above. In sum, (i) VECC has failed to demonstrate that it represents a material and valid interest in the disposition of the Application; (ii) VECC’s submissions about its interest in the Application (paragraph 11 of its intervention) and the grounds underpinning its intervention (paragraph 10) are entirely erroneous; and (iii) VECC possesses no particular and unique expertise on matters related to LNG supply, contracts and pricing issues such that the value that VECC would bring to the proceeding would outweigh the costs of its participation in this proceeding (which would be borne by the Applicants).

Yours very truly,

original signed by Helen T. Newland

Helen T. Newland

HTN:ko

cc:

Daryl Skworchinski
Corporation of the Town of Marathon

Clint Warkentin
Certarus Ltd.

Stephanie Ash
FireDog Communications

John Lawford
PIAC

Laurie E. Smith, QC
Bennett Jones LLP

Mark Garner
Consultant to VECC