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BY EMAIL

October 10, 2019

Ms. Christine E. Long
Registrar and Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Dear Ms. Long:

**Re: Corporation of the Town of Marathon (Corporation)
North Shore LNG Project
OEB Staff Submission on Request for Confidentiality
Ontario Energy Board File Number: EB-2018-0329**

In accordance with Procedural Order No. 1, please find attached the OEB staff submission for the Corporation's request for confidentiality. This document has been sent to the Corporation.

Yours truly,

Original Signed By

Ritchie Murray
Case Manager



ONTARIO ENERGY BOARD

OEB STAFF SUBMISSION ON REQUEST FOR CONFIDENTIALITY

October 10, 2019

**Corporation of the Town of Marathon
North Shore LNG Project
EB-2018-0329**

The Corporation of the Town of Marathon's (applicant's) request for confidentiality raises two questions: 1) should the document be granted confidential status? And 2) if so, should the Ontario Energy Board (OEB) prevent all parties from seeing the document, even if they sign the OEB's Declaration and Undertaking (the Undertaking).

The default position for all filed documents is that they should be placed on the public record. The OEB does allow for confidential treatment under some circumstances, but the onus for establishing that a document should be afforded confidential status rests with the party making the request.

OEB staff understands from the letter requesting confidential treatment that the document relates to the financing of the project. The applicant's explanation for why the document should be declared confidential is as follows: "[p]ublic disclosure of the document in whole or in part would be detrimental to the [applicant] and would irreparably damage the interest of each of the five Municipalities represented in this Application. It is entirely possible that the public disclosure of the confidential information could be used by others to serve their private interests by obstructing, frustrating or delaying efforts to provide timely, cost effective and reliable natural gas service to Northern Ontario residents and businesses." The applicant further noted that the document was provided to the applicant on the condition that it not be publicly disclosed.

It is not entirely clear to OEB staff how disclosure of this information could be used by others to frustrate or otherwise delay the proposed project. OEB staff believes the OEB would be assisted if the applicant could provide further details regarding the reason for the request, and the potential harm that could arise if the document were to be made public. The applicant might also address why the document will no longer be confidential at the time of the subsequent rates application, at which time the applicant has stated that it will file the document on the public record.

Ordinarily when the OEB declares a document to be confidential it can still be viewed by parties that have signed the OEB's Declaration and Undertaking (the Undertaking) with respect to confidentiality. OEB staff understands that the applicant is requesting that the document not be viewed by anyone other than "members of the OEB"; in other words that it not be available even to parties that sign the Undertaking. Although this is unusual, it has been permitted by the OEB in the past. For example, in a recent Ontario Power Generation proceeding the Board granted confidential status to certain documents relating to the applicant's collective bargaining strategies, but prevented member of the Power Workers' Union from seeing the documents even if they signed the Undertaking.¹

¹ EB 2013-0321, Procedural Order No. 7, p. 3.

In the current case it is not clear that this treatment is warranted. OEB staff submits that more information is needed from the applicant to explain why, to the extent that the information is confidential, the OEB's ordinary process (i.e. confidential documents made available to parties signing the Undertaking) is not sufficient. If there is a concern, for example, that this information might provide an unfair advantage to a potential competitor, it might be sufficient to prevent only potential competitors from seeing the document.

All of which is respectfully submitted.