

Corporation of the Town of Marathon

Application for approval to construct a natural gas pipeline and associated facilities in the Town of Marathon, the Township of Manitouwadge, the Township of Schreiber, the Township of Terrace Bay and the Municipality of Wawa

PROCEDURAL ORDER NO. 2

October 30, 2019

The Corporation of the Town of Marathon (The Town of Marathon), Township of Manitouwadge, Township of Schreiber, Township of Terrace Bay and the Municipality of Wawa (the Municipalities) have resolved to form a new natural gas distribution company to distribute natural gas in their respective municipalities.

The Town of Marathon, on its own behalf and as a representative of the Municipalities listed above, applied to the Ontario Energy Board (OEB) on August 2, 2019 under section 90 of the *Ontario Energy Board Act*¹ for approval granting leave to construct approximately 116.5 kilometers of natural gas pipeline for the North Shore LNG Project. The Town of Marathon also applied to the Ontario Energy Board under sections 8 and 9 of the *Municipal Franchises Act*² for certificates of public convenience and necessity and for approval of a municipal franchise agreement for each Municipality. The Town of Marathon also applied for an order or orders for a gas supply plan to serve each Municipality, and for pre-approval, under section 36 of the *Ontario Energy Board Act*, of the cost consequences of a long-term liquefied natural gas supply contract with Nipigon LNG Limited Partnership. On August 15, 2019, The Town of Marathon updated its application and also applied to the OEB under section 97 of the *Ontario Energy Board Act* for approval of the forms of easement agreement.

The OEB issued a Notice of Hearing on September 12, 2019.

¹ *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, (Schedule B)

² *Municipal Franchises Act*, R.S.O. 1990, c. M.55

Interventions

Each of Certarus Ltd. (Certarus), Enbridge Gas Inc. (Enbridge Gas), Jackfish Metis Association, Nipigon LNG Corporation (NLNG), Red Rock Indian Band and Vulnerable Energy Consumers Coalition (VECC) applied for intervenor status by the deadline established in the notice. Jackfish Metis Association and VECC also applied for cost eligibility.

The OEB issued Procedural Order No. 1 on October 7, 2019, that granted intervenor status and cost eligibility to Jackfish Metis Association and intervenor status to Red Rock Indian Band. Procedural Order No. 1 granted Enbridge Gas monitor status and requested that Certarus and VECC file additional information in relation to their respective intervention requests, since objections were received.

Subsequently, Bingwi Neyaashi Anishinaabek First Nation (BNA First Nation), the School Energy Coalition (SEC), and Anwaatin Inc. (Anwaatin) applied for intervenor status. SEC also applied for cost eligibility.

There were no objections to the participation of BNA First Nation, and it is approved as an intervenor.

Certarus and NLNG

Certarus' intervention request stated that it wished to intervene in the proceeding in order to adduce evidence related to its competitive Compressed Natural Gas (CNG) supply service, which it claims can fulfill the Municipalities' natural gas requirements at operating costs lower than the operating costs of landed Liquefied Natural Gas (LNG). The Town of Marathon objected to the intervention request of Certarus. The Town of Marathon stated that the CNG supply option had been ruled out as non-viable at an early stage of the development work, and that the application is premised on LNG supply. Further, the Town of Marathon expressed concern that Certarus is acting with improper purpose that may prejudice the applicant and harm the communities with no off-setting benefits.

The OEB also received a letter from NLNG objecting to the intervention request of Certarus. NLNG is the counterparty to the proposed long term gas supply contract that forms part of the application and, if the contract is approved and executed, would be the company delivering LNG to the utility's various service territories. NLNG stated that it recognized that it may be appropriate for the OEB in this Proceeding, given the narrow scope of the application, to determine that neither NLNG nor Certarus has a substantial

interest in the proceeding within the meaning of Rule 22.02 of the OEB's *Rules of Practice and Procedure* and therefore to deny intervenor status to both NLNG and Certarus. However, NLNG reiterated its request to be granted intervenor status for, among other reasons, the fact that the Municipalities selected NLNG as the counterparty to the long-term gas service contract.

On October 11, 2019, Certarus filed its reply to the objections. Certarus reiterated that it does not seek to disrupt or impair the application, but that by intervening it wishes to ensure fair and open access to the gas distribution systems proposed by the Municipalities. Certarus asserts this would enhance the reliability of gas supply service to all Municipalities by, among other things, ensuring alternative supply during periods of planned and unplanned LNG service interruptions.

The OEB has determined that both NLNG and Certarus are accepted to intervene in this proceeding. The Town of Marathon has applied for approval of a long-term gas supply plan to serve each Municipality, and for pre-approval of the cost consequences of a ten year liquefied natural gas supply contract. The OEB would be assisted by the consideration of possible alternatives for the proposed gas supply plan and gas supply contract. The interventions of NLNG and Certarus are accepted on these issues only.

VECC

In its Notice of Intervention, VECC states that its interest in this proceeding relates to ensuring,

[T]hat the interests of both existing and new natural gas consumer[s], 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 that service. This application will have impacts 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. 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.

VECC's Notice of Intervention also states that it is comprised of The Federation of Metro Tenants Association (FMTA) and The Ontario Coalition of Senior Citizens' Organizations (OCSCO). VECC states that the FMTA encourages the organization of tenants and the promotion of decent and affordable housing, and the OCSCO aims to

improve the quality of life for Ontario's seniors. VECC noted that it advocates on behalf of the interests of Ontario's vulnerable consumers with respect to energy issues.

The Town of Marathon objected to VECC's request for intervention, noting that VECC had failed to demonstrate a material and valid interest in the application. The Town of Marathon noted that the FMTA represents tenants in the City of Toronto and does not represent tenants who live in the five municipalities affected by this application. Similarly, The Town of Marathon noted that it is not clear whether the OCSCO represents any senior citizen groups in the affected municipalities. The Town of Marathon also noted that VECC has failed to demonstrate valid grounds for intervening. With respect to VECC's interest in reviewing competing proposals, The Town of Marathon noted that the OEB had determined that it did not expect to undertake a competitive process with respect to the provision of natural gas service to the affected municipalities.

The OEB has also received an objection from NLNG in relation to VECC's intervention request. In response, VECC noted that the OEB should not consider the submissions of NLNG because NLNG does not have "legitimate standing to object otherwise or comment on VECC's request." VECC also noted that it has participated in similar proceedings before the OEB.

SEC

SEC's intervention request, dated October 10, 2019, states that it has a substantial interest in the application as it represents the interests of its member school boards and schools, and the application recognizes that there are 22 schools in the five communities.

On October 18, 2019, The Town of Marathon filed a letter requesting an extension to the date by which submissions on the School Energy Coalition's (SEC) request for intervenor status must be filed. The OEB granted the extension, and set the date for submissions on SEC's request for intervenor status at October 22, 2019. The OEB set the date by which SEC may submit a response to submissions on its intervention request at October 25, 2019.

The Town of Marathon objected to SEC intervention by letter dated October 22, 2019. They noted that SEC may have a general mandate to represent school boards but lack a specific constituency in this case. In addition, the Town of Marathon questioned whether SEC's issues regarding the unique aspect of this application and the need to allow schools to "access a range of energy services" are appropriate considerations.

SEC filed its reply submission on October 25, 2019, in which it explained its relationship with school boards across Ontario through the Ontario Education Services Corporation. SEC explained that it does not contact each member school board every time it intervenes in a proceeding. However, given the uniqueness of this particular application, SEC did contact the affected school boards in this particular case; none of the affected school boards objected to SEC intervening in this proceeding. SEC noted that potential customers have a direct interest in the terms and cost consequences of the gas supply plan and LNG contract, which require the OEB to exercise its section 36 rates authority.

VECC and SEC

VECC and SEC are approved as intervenors with a limited scope of participation as to issues related to the proposed construction costs and the long term contract and gas supply plan. On these topics these intervenors could provide a useful perspective to the OEB on the impact to customers. While rate setting is not an appropriate topic to be examined as part of the Leave to Construct application, Marathon's application includes approval of the proposed long term contract and gas supply plan which will impact the energy cost to consumers, as will the construction costs of the infrastructure, and are therefore appropriate for comment by VECC and SEC. How the revenue requirement will be recovered, including the actual permissible annual revenue updates, will be decided later with the full participation of affected ratepayers.

VECC and SEC are eligible to apply for an award of costs under the OEB's *Practice Direction on Cost Awards*.

Anwaatin

Anwaatin is an Indigenous business corporation which focusses on: (i) access to efficient electricity and natural gas energy solutions for indigenous communities; (ii) ensuring Indigenous communities have reliable energy transmission and distribution services in order to meet basic needs and facilitate economic development; (iii) addressing poor electricity reliability and the disparate and adverse impacts that it has on Indigenous communities and Aboriginal rights; and (iv) strengthening distributed energy resources in Indigenous communities to facilitate resilience and efficient electrification solutions to address climate change. In its initial letter of intervention, Anwaatin stated that its member Indigenous communities for this proceeding included, Aroland First Nation and Animbiigoo Zaagi'igan Anishinaabek. It further stated that "additional Indigenous communities identified in the Application may also be included among Anwaatin's Indigenous members in this proceeding".

In its letter of October 21, the OEB requested that Anwaatin provide additional information on the direct interest of the specific parties that it represents relevant to this proceeding.

On October 24, 2019, Anwaatin filed additional information that confirmed its member Indigenous communities for this proceeding are Aroland First Nation, Animbiigoo Zaagi'igan Anishinaabek Nation, and Ginoogaming First Nation (the Anwaatin First Nations). Anwaatin stated that the Anwaatin First Nations each have traditional territory, and associated rights and interests protected by the Constitution Act, 1982, that will be impacted by the North Shore LNG Project and the outcomes of this proceeding. Anwaatin stated that it also awaiting final instructions from additional First Nations named in the application that have direct traditional territorial and aboriginal rights and interests that will also be directly impacted by the proposed North Shore LNG Project.

The OEB notes that Ginoogaming First Nation has been identified by the Town of Marathon's consultant Stantec as having a potential interest in the project, and they have already undertaken some engagement activities with them. The OEB accepts that there are potential impacts, and accepts Anwaatin as an intervenor on this basis. However, the scope of this intervention is limited to impacts on communities that Anwaatin directly represents, and to the issues that are within the scope of the applications currently before the OEB. Anwaatin is to be focused in their participation on items that are directly related to impacts of the North Shore distribution development.

Anwaatin is eligible to apply for an award of costs under the OEB's *Practice Direction on Cost Awards*.

An updated 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 Request

By the letter dated August 2, 2019 and pursuant to the OEB's *Rules of Practice and Procedure* and the OEB's *Practice Direction on Confidential Filings*, The Town of Marathon requested confidential treatment for Appendix A of its application. The Town of Marathon stated that Appendix A contains confidential information that was supplied

to it by an investment bank regarding the financing of the project. The Town of Marathon argued that public disclosure of this document would be detrimental to the applicant, and that it could be used by others to serve their private interest. The Town of Marathon stated that the investment bank requested the document not be disclosed to anyone except to OEB Board members who will be hearing this application.

Procedural Order No. 1 made provision for the filing of submissions on The Town of Marathon's request that the confidential information in Appendix A only be disclosed to OEB Board members.

OEB staff submitted that it is not clear how disclosure of the document could be used by others to frustrate or delay the proposed project. OEB staff further submitted that it would be helpful if The Town of Marathon provided further details regarding the reason for the request, and the potential harm that public disclosure could reasonably be expected to cause.

OEB staff noted that it is customary for parties to complete a Declaration and Undertaking (Undertaking) to access a document that the OEB has deemed confidential. OEB staff also requested an explanation as to why The Town of Marathon requested that only OEB Board members be granted access to the document.

The OEB has decided that The Town of Marathon should be given the opportunity to respond to OEB staff's request for additional information on the confidentiality request. The OEB would benefit from a reply submission from The Town of Marathon on the information requested in OEB staff's submission on the confidential request.

Interrogatories

At this time, provision is being made for written interrogatories.

Parties should not engage in detailed exploration of items that do not appear to be material and relevant. 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 and relevant issues.

Being eligible to apply for recovery of costs is not a guarantee of recovery of any costs claimed. Cost awards are made by way of an OEB order at the end of a proceeding.

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 THEREFORE ORDERED THAT:

Confidentiality

1. The Town of Marathon shall file with the OEB a submission on its request for confidential treatment and serve it on all parties by **November 6, 2019**.

Interrogatories

2. OEB staff and intervenors shall request any relevant information and documentation from The Town of Marathon that is in addition to the evidence already filed, by written interrogatories filed with the OEB and served on all parties by **November 12, 2019**.
3. The Town of Marathon shall file with the OEB complete written responses to all interrogatories and serve them on OEB staff and all intervenors by **November 26, 2019**.

Submissions

4. The Town of Marathon shall file its argument-in-chief, if any, with the OEB and serve it on OEB staff and all intervenors by **December 10, 2019**.
5. OEB staff and intervenors may file any written final submission with the OEB and serve them on all parties by **January 6, 2020**.
6. The Town of Marathon may file a written reply submission with the OEB and serve it on OEB staff and all intervenors by **January 20, 2020**.

All materials to the OEB must quote the file number, EB-2018-0329, 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 <https://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 seven paper copies.

All communications should be directed to the attention of the Board Secretary 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, Ritchie Murray at Ritchie.Murray@oeb.ca and OEB Counsel, Michael Millar at Michael.Millar@oeb.ca.

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DATED at Toronto, **October 30, 2019**

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Registrar and Board Secretary

SCHEDULE A
TO PROCEDURAL ORDER NO. 2
TOWN OF MARATHON
EB-2018-0329
APPLICANT AND INTERVENORS LIST
DATED: OCTOBER 30, 2019 (Revision 2)

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

APPLICANT & LIST OF INTERVENORS

Revised October 30, 2019

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Corporation of the Town of Marathon
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APPLICANT & LIST OF INTERVENORS

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