

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**

DECISION ON CONFIDENTIALITY & PROCEDURAL ORDER NO. 3

November 11, 2019

The Corporation of the Town of Marathon (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 LGN 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.

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

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

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 stated that the investment bank requested the document not be disclosed to anyone except OEB Board members who will be hearing this application. 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.

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 the Town of Marathon should provide 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 to access a document that the OEB has deemed confidential, and requested an explanation as to why the Town of Marathon requested that access to the document be granted only OEB Board members.

Procedural Order No. 2 made provision for the Town of Marathon to respond to OEB staff's request for additional information on the confidentiality request, and file such information by November 6, 2019.

In accordance with Procedural Order No. 2, the Town of Marathon filed a confidentiality submission, which included wording from the investment bank. The investment bank stated that Appendix A contains its confidential and proprietary business information, including commercial terms and conditions, which may enable one to constitute its analysis and information related to its client assessment, strategic decision-making and risk management and tolerance. The investment bank further submitted that certain information in Appendix A was provided in confidence by their affiliates, and disclosure could negatively impact the investment bank, since it may no longer receive this information from its affiliates. The investment bank argued that disclosure could impact the competitive market position of itself, its affiliates and its affiliates' respective clients, and may impact the contractual or other negotiations of the affiliates' clients. The

investment bank noted that the letter was provided to the Town of Marathon for their application to the OEB relating to the project, and should only be disclosed to “representatives of the OEB who are involved in consideration of the project”.

The Town of Marathon reaffirmed its request that only those involved in the consideration of the proposed project, which they specified as Board Members, should be granted access to view Appendix A. The Town of Marathon noted its intention to withdraw Appendix A from its application should the OEB not grant its request for confidentiality.

OEB Findings

The OEB denies the request for confidential treatment of Appendix A. The OEB finds that the main focus of Appendix A is to provide an “opinion” to the OEB on behalf of the Town of Marathon about its ability to acquire the requisite financing for the project. In the OEB’s opinion, Appendix A does not contain any information that could prejudice the bank’s competitive position.

The OEB acknowledges that the Town of Marathon’s submission dated November 6, 2019 indicated its intent to withdraw Appendix A from its application if confidentiality was not granted. The OEB provides November 18, 2019 as the deadline for the Town of Marathon to file the request to withdraw Appendix A, and will not make Appendix A available to any party before this date. The OEB notes that, should the Town of Marathon withdraw Appendix A from the record, there will be less documentation on the record demonstrating the Town of Marathon’s ability to fund the North Shore LNG Project; however, the Town of Marathon may demonstrate this through its replies to interrogatories.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The Town of Marathon’s request for confidential treatment for Appendix A of the application is not granted.
2. Should the Town of Marathon wish to withdraw Appendix A from the application, they shall file this request with the OEB by **November 18, 2019**.

All materials filed with 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 <http://www.oeb.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have computer access are required to file 7 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.

ADDRESS

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

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

DATED at Toronto, **November 11, 2019**

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Board Secretary and Registrar