



BATCHEWANA FIRST NATION OF OJIBWAYS

RANKIN RESERVE 15D
GOULAIS BAY RESERVE 15A
OBADJIWAN RESERVE 15E
WHITEFISH ISLAND 15

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Batchewana First Nation, Ontario P6A 6Z1
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www.batchewana.ca

November 13, 2019

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

Attention: Registrar

Dear Ms. Long

**Subject: Corporation of the Town of Marathon
North Shore LNG Project Application - Board File No.: EB-2018-0329**

Please find attached the Batchewana First Nation's Application for Intervenor Status and Costs Eligibility in the above-noted proceeding.

We apologize for submitting this Application after the date specified by the Board for doing so. In my meeting with staff last Friday, November 8, I was advised that our Application might be considered if submitted by Wednesday, November 13. I trust this is satisfactory.

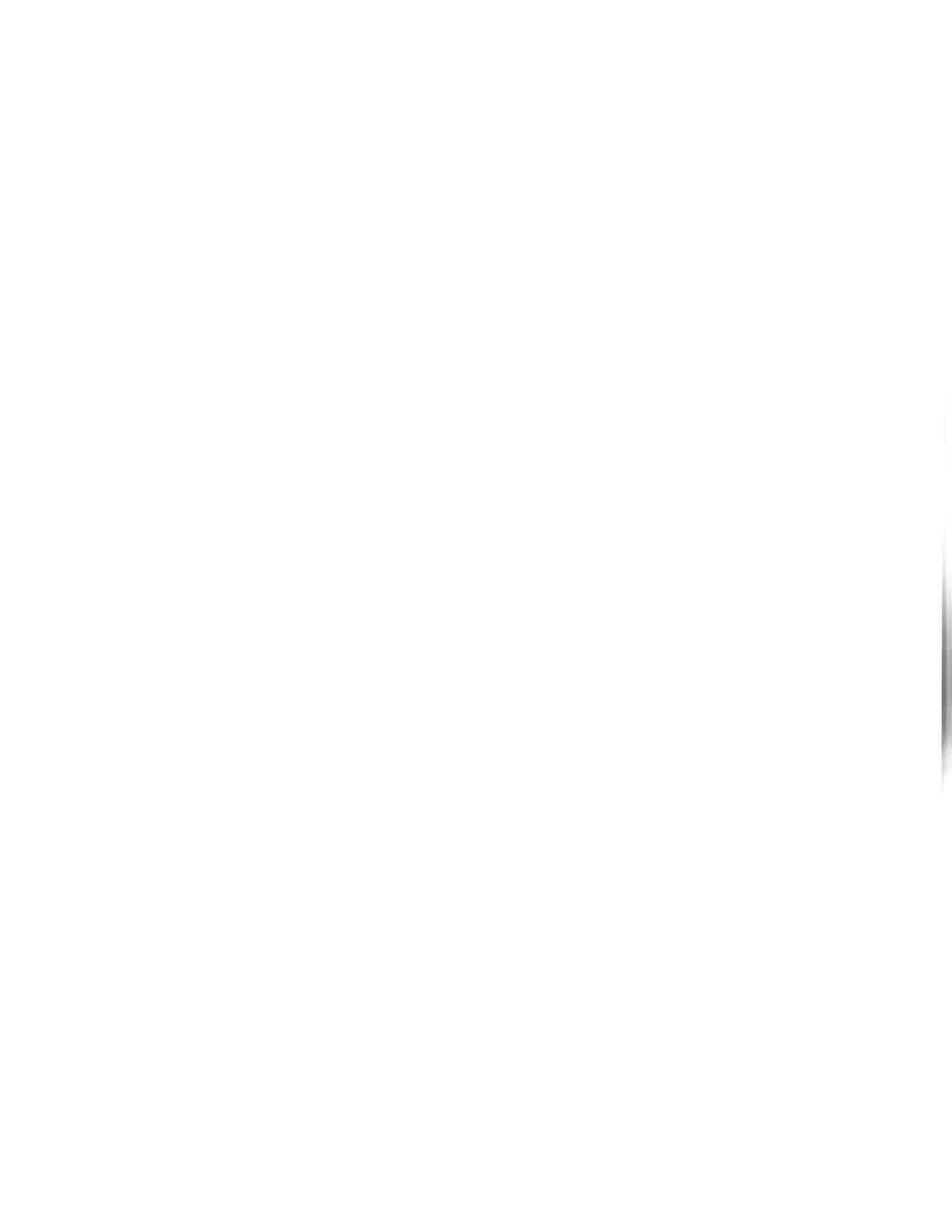
This letter and the attached Application are being sent by e-mail to you, to those designated by the Board including the Secretary, and to the parties and approved intervenors. The original documents are being couriered to you immediately. Thank you for your consideration.

Sincerely

A handwritten signature in black ink, appearing to read 'Dean Sayers', with a large, sweeping flourish underneath.

Chief Dean Sayers
Batchewana First Nation

cc. Ritchie Murray, Case Manager, Ritchie.Murray@oeb.ca
Michael Millar, OEB Counsel, Michael.Millar@oeb.ca



ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, SO 1998, c. 15 (Sched B), as amended (the **Act**) and the *Municipal Franchises Act* (the **MFA**), RSO 1990, c. M.55, as amended;

AND IN THE MATTER OF an application by the Corporation of the Town of Marathon under section 8 of the MFA for an order or orders granting Certificates of Public Convenience and Necessity to the Corporation for the construction of works in the Town of Marathon, Township of Manitouwadge, Township of Schreiber, Township of Terrace Bay, and Municipality of Wawa;

AND IN THE MATTER OF an application by the Corporation of the Town of Marathon under section 90 of the Act for an order or order granting leave to construct natural gas distribution pipelines and ancillary facilities to serve the Town of Marathon, Township of Manitouwadge, Township of Schreiber, Township of Terrace Bay, and Municipality of Wawa;

AND IN THE MATTER OF an application by the Corporation of the Town of Marathon under section 97 of the Act for an order or orders approving the form of easement agreements;

AND IN THE MATTER OF an application by the Corporation of the Town of Marathon for an order or orders for a gas supply plan to serve the Town of Marathon, Township of Manitouwadge, Township of Schreiber, Township of Terrace Bay, and Municipality of Wawa;

AND IN THE MATTER OF an application by the Corporation of the Town of Marathon for an order or orders pre-approving the cost consequences associated with a long-term upstream liquefied natural gas contract to serve the Town of Marathon, Township of Manitouwadge, Township of Schreiber, Township of Terrace Bay, and Municipality of Wawa.

APPLICATION FOR INTERVENOR STATUS AND COSTS ELIGIBILITY

BATCHEWANA FIRST NATION

["BFN"]

November 12, 2019

A. Application for Intervenor Status

1. The Batchewana First Nation (**BFN**) hereby requests intervenor status in the matter of the application of the Corporation of the Town of Marathon (the **Corporation**), 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 (the **Municipalities**), for certain approvals from the Ontario Energy Board (the **Board**) to furnish natural gas service within the Municipalities (the **Application**). This BFN Application for intervention is filed pursuant to Rule 22 of the Board's *Rules of Practice and Procedure* (the **Rules**).
2. Pursuant to section 22.05 of the Rules, this notice is filed after the Board's prescribed deadline. BFN undertakes that it shall be bound by the record as it exists and as developed by the parties and the Board from time to time, that it shall comply with all directions made and dates set by the Board, and that it shall take no steps nor bring any motions that would cause or contribute to any delay in the proceedings.
3. BFN respectfully submits that no party should be prejudiced by this late intervention and requests the Board's indulgence in accepting this late Application without the formality of a motion.

B. Batchewana First Nation's Interest in the Proceeding

4. BFN's interest in this proceeding relates to the proposed use and occupation of lands within our original reserve and traditional territory, the protection of the lands, waters and environment, the exercise of our aboriginal and treaty rights and both the substantive and procedural guarantees of s. 35(1) of the *Constitution Act, 1982*. The next few paragraphs describe the historical context for these interests and they will be followed in the next section by an explanation of BFN's direct interest in this proceeding.
5. BFN is a "band" within the meaning and for the purposes of the *Indian Act*, RSC 1985, c I-5, s. 2(1), with two reserves at Sault Ste. Marie, Rankin Reserve and Whitefish Island Reserve on the St. Mary's River, and two reserves, Goulais Bay Reserve and Obadjiwon Reserve, on Lake Superior north of Sault Ste. Marie.
6. The Batchewana First Nation is part of the Ojibway, or Anishnabek. We have traditionally and actually occupied lands from the rapids at Sault Ste. Marie to Otter Head, on Lake Superior

northwest of Wawa and inland at least to the height of land. We continue to use the entire area for traditional purposes including hunting, gathering and fishing. Our treaty rights to do so pursuant to the Robinson Huron Treaty of 1850 have been established in two court decisions, even though some of our protected activities take place in what might appear to be the Robinson Superior Treaty area.

7. Prior to the signing of the two Robinson Treaties in 1850, Messrs Vidal and Anderson were commissioned in 1849 to ascertain the First Nation interests along the north shore of Lake Huron and the Canadian shore of Lake Superior. Attached to this Application is part of the map¹ they prepared roughly describing the traditional territory and original reserve of BFN as shared with the Sault Ste. Marie Band (now Garden River First Nation) and the Michipicoten First Nation. The respective interests of the three First Nations in the original reserve have never been defined, though as noted above BFN exercises its rights throughout this traditional territory.
8. It may also be noted that BFN members reside throughout the territory, including a number of members and their families in the Municipality of Wawa; i.e., potential consumers of the natural gas service.

C. BFN's Direct Interest in the Proceeding

9. BFN's direct interest relates specifically to the subjects of: LNG transport in the context of environmental protection and safety; liability for adverse effects upon BFN aboriginal and treaty rights; and Indigenous Consultation. We have been assisted in particularizing these interests by the Board's Interrogatories to the Proponent dated November 8, 2019 (**Interrogatories**). For example, Board staff note at #19 that Stantec's consultation program was not responsive to a question about groundwater contamination.
10. LNG Truck Transportation Services – As will be seen from the attached map, the proposed truck transport of LNG from Nipigon to, in particular, Wawa passes through BFN's original reserve. BFN is also involved in commercial developments within the area which might be considered for future participation as industrial purchasers of the natural gas service proposed. Whatever risk the Board may ultimately assign to the trucking and transport aspect of the proposal, BFN

¹ Another version of the same map is included by the Proponent as Figure 8 in the Manitouwadge ER, EX. A-10-1a.

regards the potential for environmental harm and adverse impact on the exercise of BFN rights as obvious. In that regard, BFN notes that no Environmental Protection Plan (EPP) has been delivered or filed to date: Interrogatories, No. 17; also #37 re additional Truck Transportation Services and #42 re contingency arrangements.

11. Liability – Apart from issues of safety and risk management, BFN has an interest in ensuring that proper parties with sufficient surety will be liable and responsible for any environmental harm and adverse impact that might occur. Given BFN’s role as a keeper of the land, it’s interest here is restorative. Board staff have raised issues in the Interrogatories that relate directly to liability; e.g., #44 (different standards of care and a cap on NLNG liability), #40 (financial security to be provided by the Utility) and #41 (anticipated cost of the Utility’s responsibility for all fees, charges and expenses for Truck Transportation Services).

12. Indigenous Consultation – Interrogatories #'s 20-22 address the sufficiency of consultation and the level of engagement with Indigenous communities and groups. EX. A-10-1e, App. B-5, Table 5, entries 3.1 and 3.2 note cursory contact with BFN amounting to a request that “someone from the First Nation” contact Stantec. The designated contact in App B-1 is Chief Sayers. There is a Contact Sheet noted later in the report that indicates a conversation with a BFN employee on June 13, 2019 who was sent correspondence and said she would follow up if there were any questions or concerns. The Proponent, who could not know that employee is no longer with the First Nation, did not follow up at all.

13. At this point, it is respectfully submitted that BFN has legitimate direct interest in the proceedings and that the only manner in which these can now be addressed, concerns raised and questions answered is by way of this intervention. It is the most effective and most timely way for BFN to proceed.

D. Nature and Scope of BFN's Intended Participation

14. BFN intends to be a moderately active participant in this proceeding and to limit its involvement to the issues and subject areas noted above. BFN does not propose to introduce any evidence, but will request information, submit written interrogatories, test evidence within its areas of concern and make argument as it deems appropriate. BFN will take pains to ensure that its

involvement is not repetitive and may coordinate with other intervenors on issues of common interest.

15. To be clear, BFN has no intention to engage on technical matters, market forecasts or the corporate organization of the Proponent municipalities. BFN does not oppose the Project or the granting of any of the requests of the Proponent municipalities subject to appropriate orders, directions and conditions made or imposed by the Board.

E. Costs

16. BFN is, in accordance with s. 3.03(b) of the Board's *Practice Direction on Cost Awards*, eligible to seek an award of costs as BFN is a party that primarily represents an interest or policy perspective that is relevant to the Board's mandate and to the proceeding.
17. BFN will, if granted intervenor status, request in due course an award of reasonable costs commensurate with its own level of participation in the proceeding, with the Practice Direction and subject to the Board's discretion.
18. BFN therefore respectfully requests that it be granted costs eligibility as an adjunct to the grant of intervenor status.

F. Batchewana First Nation Representatives

19. BFN requests that further communications with respect to this proceeding be sent to the following:

Batchewana First Nation

Attention: Chief Dean Sayers Telephone: 705-759-0914 – Ext. 202
Facsimile: 705-759-8213
Email: chiefdeansayers@batchewana.ca

AND TO ITS CONSULTANT

Aboriginal Business Network

Attention: Wayne Greer Telephone: 519-580-3150
Facsimile:
Email: wayne@abnetwork.ca

AND TO ITS COUNSEL

William B. Henderson

Barrister and Solicitor

3014 – 88 Bloor Street East

Toronto, ON M4W 3G9

Telephone: (416) 413-9878

Email: lawyer@bloorstreet.com

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS

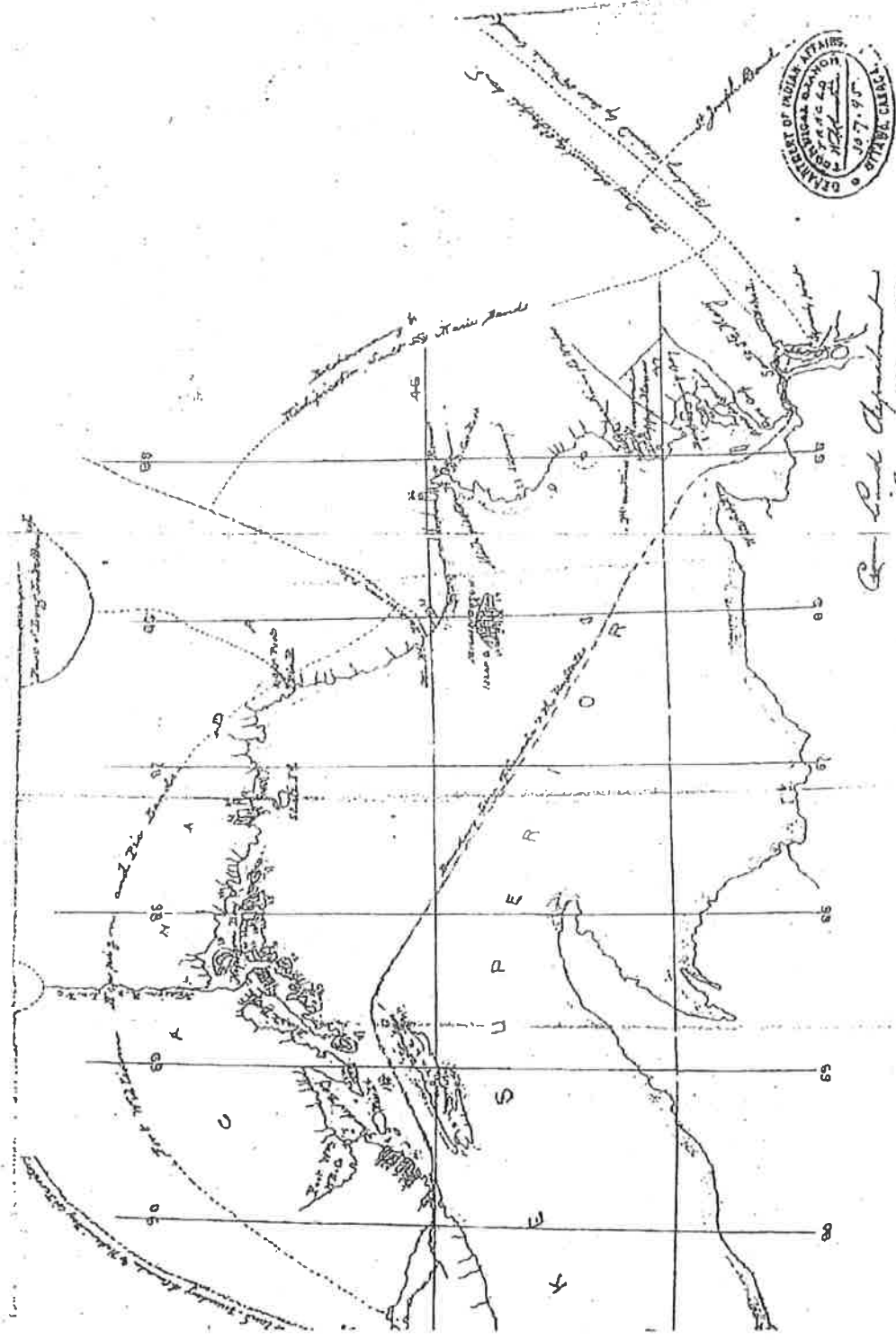
13th Day of November, 2019

A handwritten signature in black ink, appearing to read 'Dean Sayers', is written over a horizontal line. The signature is stylized and cursive.

CHIEF DEAN SAYERS

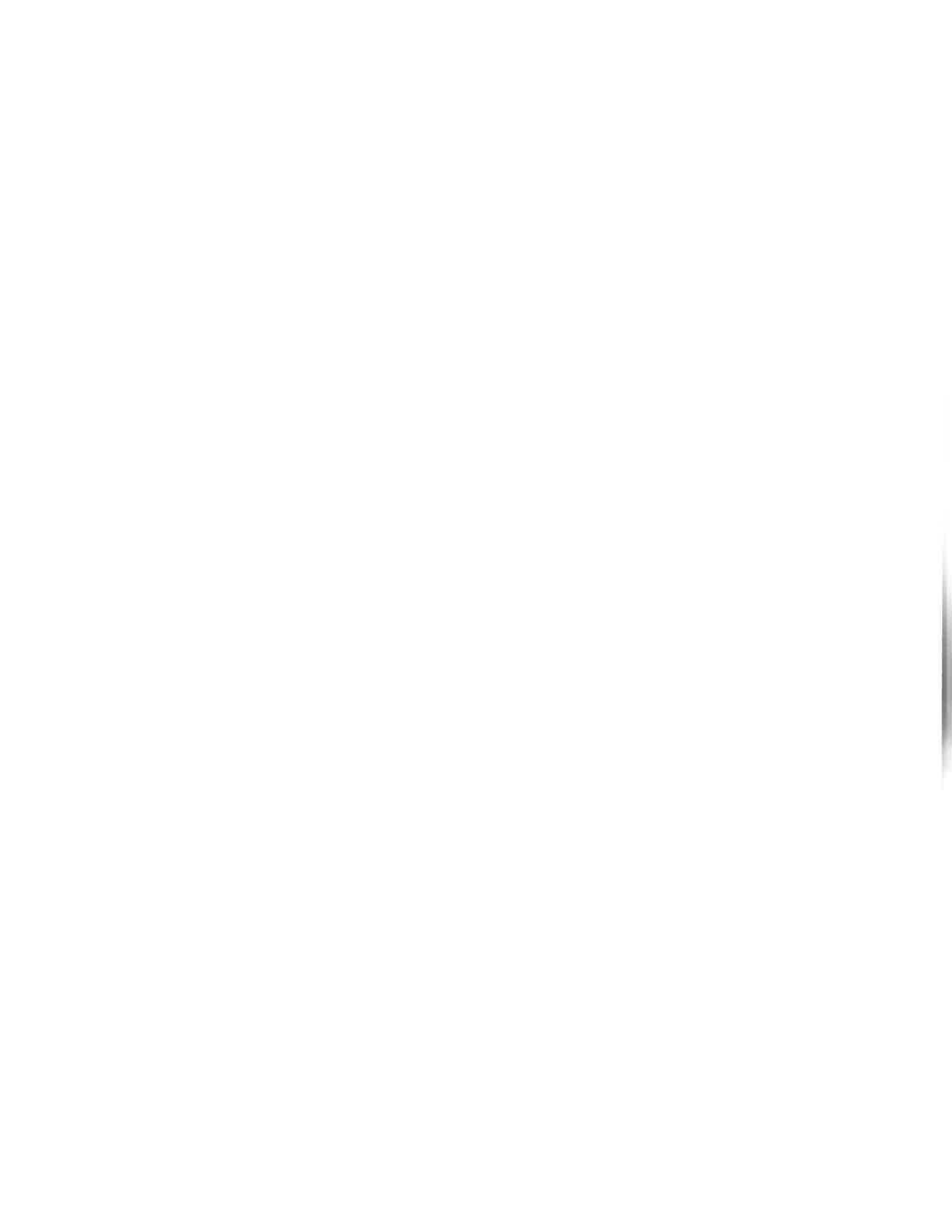
BATCHEWANA FIRST NATION

REPORT OF COMMISSIONERS VIDAL AND ANDERSON - 1849



G. Lind Chapman
Surgeon Office West
Sault Ste. Marie August 15 1849

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