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.

Corporation of the Town of Marathon ("Marathon")

Response to Interrogatories
of
School Energy Coalition ("SEC")

November 26, 2019

SEC-1

[A-1-2, p.1] The Applicant states that it is seeking certain conditional approvals:

a. Please detail what specific approvals are being sought on a conditional basis and what specific conditions it is seeking the Board apply to those approvals.

b. When does the Applicant expect to be in a position to fulfill these conditions, and what processes does the Applicant envision the OEB using to demonstrate the conditions have been fulfilled?

Responses

a. The Applicant seeks conditional approval of its application under section 90 of the *Ontario Energy Board Act, 1998* ("**OEB Act**") for an order or orders granting leave to construct natural gas distribution pipelines and ancillary pipeline facilities to serve the Town of Marathon, Township of Manitouwadge, Township of Schreiber, Township of Terrace Bay and Municipality of Wawa (the "**Leave to Construct Approval**").

   The Applicant proposes that the Leave to Construct Approval be granted subject to, *inter alia*, a final review, by the OEB, of the Utility's technical and financial capacity required to construct, own and operate the proposed distribution network. At the current time, the Utility has yet to be constituted and it is not yet possible to provide the OEB with evidence of technical and financial capacity.

b. See response to OEB Staff-26 a.

SEC-2

Please provide details regarding the expected ownership structure of the yet to be formed utility corporation.

Response

The Utility will be owned, directly or indirectly, in equal parts by the five (5) Municipalities. It will be governed by an experienced and skilled Board of Directors. Each Municipality will be entitled to nominate one nominee to the Board of Directors. Please see also response to OEB Staff-25.

SEC-3

[A-3-1, p.2, A-9-1, p.1-2] With respect to construction of the distribution system:

a. Please confirm that Cornerstone will be responsible for construction of the distribution system. If not, who will be responsible?

b. Please describe the experience Cornerstone (or whomever is responsible for construction) have in the construction or management of construction of a natural gas distribution system.

c. How was Cornerstone (or whomever will be responsible for construction) selected (i.e. RFP, RFQ) and what is the structure of the construction contract (i.e. fixed price contract, etc.)?

d. What class of estimate of construction costs is the forecast construction cost based on?

e. What variance in construction costs does the Applicant believe is reasonable?

Responses

a. Not confirmed. The construction contractor for the distribution system has not yet been procured. The Utility will select the construction contractor on the basis of a competitive procurement process, open to all qualified bidders.

b. The selected constructor will be chosen based on clearly defined procurement criteria which emphasize experience in constructing linear infrastructure in northern Ontario (or similar environments), quality, safety and cost.

c. See the response to SEC-3(a).

d. Class B.

e. The question is unclear.

SEC-4

[A-9-1] Does the Applicant expect that the utility will enter into a shared service agreement with any of the five municipalities for the purpose of receiving certain services (i.e. billing, IT, etc.)? If so, please provide details.

Response

It is reasonable to expect that shared services agreements between the Utility and each of the five Municipalities will be considered. However, at this early stage of the project's development, we are unable to be more definitive in this regard.

SEC-5

When does the Applicant expect to file a rate application for approval of distribution rates to charge customers?

Response

The rate application will be filed after the Utility has received final and an unconditional leave to construct approval. See also response to OEB Staff-26 a.

SEC-6

[A-4-2; Decision with Reasons, EB-2016-0004, p.20-21] Please confirm the rates that the Applicant will ultimately seek approval from the OEB which will include a rate-stability period of at least 10 years.

Response

Please see the responses to OEB Staff-12(b)-(d).

SEC-7

[A-4-2, p.2] Please provide the underlying spreadsheet used to create Figure 1. Please explain all assumptions made in the underlying calculations.

Response

Please see **Attachment A**.

Please note that the derivation of the annual revenue requirements includes financing inputs that are confidential at this time so only full revenue requirements are provided.

SEC-8

[A-8-1, Attach 1, p.52-53] For a number of the identified risks, the Applicant states as a risk mitigation measure that it would "[s]eek out the potential for replacement LNG supplies from alternate supplier." Please provide details regarding potential viable alternative suppliers of LNG.

Response

See section 2.7.1 of Exhibit A Tab 8 Schedule 1. See also the response to OEB Staff-31.

SEC-9

[A-9-1] The Applicant has provided forecast total capital and annual OM&A costs for the proposed project. What margin of error in the forecast costs can the Applicant sustain while maintaining the financial viability of the project?

Response

Distribution charges comprise approximately one-third of the total bill for residents, and a smaller share of the total bills of other classes. For this reason, increases capital and annual OM&A costs for the Project do not significantly impact total bills. In a scenario with a 100% increase to both capital and OM&A, and therefore a 100% increase to distribution rates, the total rate for residential customers would increase by 33.5%. The annual cost of natural gas would continue to be lower than the cost of other sources of energy (i.e., the propane, fuel oil, and electricity) that are available to the residents of the Municipalities. The Project would remain financially viable and savings would continue to outweigh conversion costs.

SEC-10

[A-4-1, p.18] The Applicant has provided forecast customer conversion rates for the proposed project. What margin of error in the forecast conversion rate for each customer type can the Applicant sustain while maintaining the financial viability of the project?

Response

Assuming there are no impacts to landed costs because lower-than-forecast residential and general service volumes are instead sold to the interruptible industrial customer, the Utility will maintain financial viability if customer attachments are at least 50% of the forecast, which has an equivalent impact as the cost variance impact discussed in response to SEC-9.

Please see the responses (g) to (k) of OEB Staff-13 for details on a scenario in which the industrial customer ceases service or cannot take excess volumes.

SEC-11

[A-3-1, p.2] The Applicant states: "Without pre-approval of the cost consequences of the proposed Contract, the Utility's investors would not commit the capital to finance the Utility, in turn, Nipigon LNG could not commit to build and operate the LNG Depots to supply the Utility with natural gas."

a. Are the referenced investors different from the 5 municipalities? If so, please provide details.

b. Is the pre-approval of the LNG Services Agreement a requirement for Nipigon LNG to, construct only the LNG Depots or also the LNG Facility?

Responses

a. The Utility's equity investors are the five Municipalities.

b. The pre-approval of the cost consequences of the LNG Services Agreement is a requirement for Nipigon LNG to construct the LNG Depot. It does not pertain to the LNG Facility.

SEC-12

[A-13, p.12] Please explain the basis for the forecast Nipigon LNG Variable Operating Cost and Trucking costs.

Response

Please see the response to OEB Staff-41.

SEC-13

[A-13-1, Attach 5] With respect to the LNG Services Agreement:

a. Please describe how the LNG Services Agreement was negotiated.

b. What information on Nipigon LNG's forecast costs did the Applicant have when it negotiated the LNG Services Agreement? Please provide the information.

c. Considering that the Nipigon LNG is itself a greenfield project, how did the Applicant determine that the fee provisions that it has agreed to are reasonable?

d. Did the Applicant undertake any third-party assessments of the terms for the LNG Services Agreement with Nipigon LNG? If so, please provide a copy of that assessment.

e. Certain material terms of the LNG Services Agreement have yet to be negotiated (e.g. section 12.2, 12.13, Schedule B, Schedule). When does the Applicant expect to finalize these terms and will it seek further OEB approval?

f. Please confirm the following aspects of the Variable Charge provision (section 4.1(b)). If not confirmed, please explain how the Applicant interpretation differs.

    i. Will be updated annually.

    ii. Will depend not just on the Applicants actual nominated daily volumes but also total nominated daily volumes of all customers of Nipigon LNG.

    iii. Is intended to recover the variable costs of the LNG Facility and LNG Depot, but both the type and quantity of those variable costs are not defined.

    iv. There is no prohibition of any 'markup' on those variable costs.

g. Please explain how the Variable Charge provision (section 4.1(b)) is reasonable.

h. Please explain how the Applicant will verify that fees and charges for Truck Transportation Services (section 4.1(c)) will not include any mark-up.

i. Under the LNG Services Agreement, is Nipigon LNG required to maintain a minimum quantity of LNG in the tanks located at the LNG Storage Depots? If so, please point to the provision that requires this.

Responses

a-d Elenchus advised the Corporation as to the economic feasibility of the Nipigon LNG supply option, relative to other LNG and non-LNG natural gas supply options. The conclusion of its analysis was that the average landed gas supply cost under the LNG Services Agreement was less than, or competitive with, the cost of alternative sources of natural gas (see Exh A-13-1, pp. 10-17).

As for due diligence regarding price comparisons between Nipigon LNG and other potential sources of LNG: The Nipigon LNG service rate is $7.03/GJ, inclusive of LNG Depot storage and trucking costs. As noted by Elenchus in section 2.7.1 of the Gas Supply Plan (Exh. A-8-1), LNG supplies from either Montreal or Minnesota would cost anywhere from 30 to 50 percent more than the Nipigon LNG supply, even before the cost of LNG Depot storage was taken into account. As for the cost of LNG from Enbridge's Hager, Ontario facility: in 2014, Union Gas (now Enbridge), filed an application (EB-2014-0012) with the Board for approval of an interruptible LNG service rate of $5.096/GJ ($5.74/GJ in 2020 dollars, adjusted at 2%/yr). To this, would have to be added the cost of LNG Depot storage and the cost of trucking the Hager supplies to the five Municipalities. Moreover, the Hagar service is not comparable to the Nipigon LNG service because it is an interruptible service that is available, on average, for only 167 days of the year or 45 percent of the time; moreover, by definition, it can be interrupted at any time. Finally, even when it is available, it is unlikely that the Utility's full winter requirements would be available. In contrast, the Nipigon LNG Service is a firm service.

In light of the analysis set out above, Elenchus and, thus, the Corporation, concluded that the Nipigon LNG service rate is reasonable and competitive.

Finally, the Applicants and their consultants did not analyse whether the costs under the LNG Services Agreement were reasonable, having regard to Nipigon LNG's underlying cost structure. Nipigon LNG's costs are commercially sensitive and have not been disclosed to the Applicants.

e. Matters pertaining to Nipigon LNG's cap and the Utility's liability under the LNG Services Agreement will be finalized during the next phase of the Project. Board approval for the final provisions will be sought if the Board so requires; however, it is not expected that such matters will alter the cost consequences of the LNG Services Agreement.

f.

i. Confirmed.

ii. Confirmed.

iii. Confirmed but see also response to OEB Staff-41.

iv. Confirmed with respect to inclusions of an express "prohibition" but see also response to OEB Staff-41 for a description of the parties' intention in this regard.

g. The LNG Services Agreement comprises the terms and conditions required by Nipigon LNG to design, develop and construct the LNG Depot and provide the LNG Services to the Utility. See also response to SEC 13 a-d which explains the reasons why the all-in cost of Nipigon LNG supply is considered to be reasonable and competitive.

h. Verification will be undertaken as necessary, from time to time, pursuant to the Utility's rights in Section 7.5 of the LNG Services Agreement.

i. Nipigon LNG is obligated to deliver LNG to the LNG Depots pursuant to the daily nominations delivered by the Utility in accordance with Article 3 and in particular, Section 3.3(a)(iii) of the LNG Services Agreement.

SEC-14

[A-13-1, Attach 5] Considering the Applicant is likely to be the largest customer for Nipigon LNG, please explain why the LNG Services Agreement does not contain a MFN (Most Favored Nations) or similar clause to ensure no other customers will receive service on more favorable terms.

Response

The Nipigon LNG facility will have a liquefication capacity of 7200 GJ/day. Under the LNG Services Agreement, the Utility will contract for 2400 GJ/day, commencing in year 1, increasing to 3700 GH/day by year 10. Nipigon LNG has not disclosed information regarding its other customers.

The specific terms and conditions pertaining to how other customers of Nipigon LNG might receive services from Nipigon LNG will reflect the circumstances of those customers. Inclusion of a most-favoured nations provision in the LNG Services Agreement, even if enforceable, would likely not be appropriate, given that circumstances of other customers will not reflect the circumstances of this Project.

SEC-15

[A-13-1] Please confirm the following:

a. Pursuant to the LNG Services Agreement, the Applicant is committed to paying over the 10 year term of the contract $86.7M in capacity charges (Adding the annual amounts in A-13-1, p.7, Table 2).

b. Based on information filed in Nipigon LNG's CPCN application (EB-2018-0248), the total capital cost of its facility is $54M (EB-2018-0248 Nipigon LNG Response to Union Gas IR 1c).

c. The Ontario Government has awarded the Nipigon LNG project $27M in funding. (https://news.ontario.ca/moi/en/2019/01/province-bringing-jobs-and-affordable-heating-to-northern-ontario.html).

Response

a. Confirmed.

b. It is the understanding of the Municipalities that the total capital cost of the Nipigon LNG facilities, as approved under the Natural Gas Grant Program and cited in EB-2018-0248, is approximately $54 million, and that amount does not include the capital cost of the LNG Depots to serve the Utility.

c. The Municipalities believe the information in the press release by the Province of Ontario to be correct.

SEC-16

[A-13-1, Attach 5] Based on the inclusion of the LNG Services Agreement, which includes terms related to rates and charges, SEC assumes the Applicant believes that Nipigon LNG does not require approval from the OEB pursuant to section 36 of the *Ontario Energy Board Act* for the setting of its rates and charges. If so, please explain why the Applicant believes that Nipigon LNG does not require approval for rates and charges for some or all of the services under the LNG Services Agreement?

Response

The Applicants expect Nipigon LNG to obtain all governmental and regulatory approvals required to construct, own and operate the Nipigon LNG Facilities.

Nipigon LNG has provided the following response to Marathon's question as to whether it will require OEB approval in respect of rates and charges under the LNG Services Agreement:

> "Nipigon LNG does not require OEB approval for rates and charges for services under the LNG Services Agreement.
>
> Nipigon LNG obtained a Certificate of Public Convenience and Necessity from the OEB for the Township of Ledger, an approval to build a small pipeline for the sole purpose of accessing natural gas from the Mainline as a direct-connection customer of TransCanada. The pipeline will not allow for distribution to any existing buildings or structures within the Township of Ledger.
>
> The Project involves the building and operating of facilities to convert natural gas to LNG and LNG back to natural gas. It is providing merchant LNG services, not gas transmission, gas distribution, or gas storage to customers.
>
> In 2014, Union Gas Limited filed an application with the OEB for an order approving a new natural gas liquefaction service from its LNG facility at Hagar, Ontario (EB-2014-0012). In EB-2014-0012, the OEB determined to refrain from regulating natural gas liquefaction services on grounds that the LNG market is workably competitive. All other LNG plants and service providers in Canada serving off-pipeline customers operate as unregulated entities. They have either been explicitly exempted from regulation or recognized for regulatory purposes as energy services or merchant companies, which are not subject to regulation under provincial legislation."

SEC-17

[A-13-1, Attach 1] On the Nipigon LNG Fact Sheet under the section "About Northeast Midstream LP", it references the North Shore Gas Distribution Project which it appears to indicate that it is a project that it either is responsible for or has some role in. Besides the LNG Services Agreement contained in the application, please provide details regarding any legal and financial relationships, that currently and are expected to exist between one or more of the: Applicant (and any of its affiliates), the utility yet to be formed, and Northeast Midstream LP (or any of its affiliates including Nipigon LNG).

Response

There is an agreement between the Municipalities and Northeast Midstream Corporation in relation to the provision of project development services for the distribution systems, which includes the payment of certain project development fees by the Municipalities. Under this agreement, Northeast Midstream Corporation's obligations to provide project development services expired on October 31, 2019.

SEC-18

With respect to Nipigon LNG:

a. Please provide details, of all legal and/or financial protections the Applicant has put in place to protect itself, and its customers, of any default on services by Nipigon LNG. Please provide copies of any such protections.

b. Please explain what the Applicant would do if Nipigon LNG ceased operating and defaulted on its obligations under the contract.

c. Please explain what steps the Applicant has undertaken to mitigate the risk outlined in part (b).

d. Please describe what due diligence the Applicant has done on Nipigon LNG and its affiliates.

e. Please provide details regarding what experience Nipigon LNG or any of its affiliates have in constructing and operating an LNG facility.

f. Please provide a schedule for construction of the Nipigon LNG project and the TCPL-Nipigon interconnection point.

Responses

a. Please review the terms of the LNG Services Agreement. In particular, section 3.6 of the LNG Services Agreement provides relief to the Utility from the obligation to pay the firm capacity charge in circumstances where Nipigon LNG fails to deliver gas at the specified delivery points.

b. Please refer to response to Certarus-1(b).

c. Please refer to response to Certarus-1(b).

d&e In January 2018, Infrastructure Ontario undertook a technical and financial review of the Nipigon LNG Project as a condition of funding advanced under the Natural Gas Grant Program. The report was completed by an independent expert. While the report is confidential and cannot be released due the commercially sensitive nature of the information, its conclusions included the following findings: the Nipigon LNG Project adheres to industry standards and best practices and is technically feasible with a procurement strategy designed to minimize risk; Northeast Midstream has assembled a strong management team and the review of the personnel and history of Northeast Midstream suggest a reputable and credit worthy firm; and the financial forecast appears to be reasonable. See also response to Certarus-8(g).

f. Please see the response to OEB Staff-29 and Certarus-8(b).

SEC-19

Please confirm that nothing contractually precludes the Applicant from offering a direct purchase option to customers if they deliver their gas to the proposed TCPL-Nipigon receipt point.

Response

Confirmed.

SEC-20

Has the Applicant sought funding for its distribution system under the program set up by Bill 32 - *Access to Natural Gas Act, 2018*? If so, please provide details.

Response

No.