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**Via RESS and Courier**

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

**Attention: Ms. Christine E. Long**  
**Registrar and Board Secretary**

Dear Ms. Long:

**Re: Corporation of the Town of Marathon North Shore LNG Project Application**  
**("Application")**  
**Ontario Energy Board File Number: EB-2018-0329 ("Proceeding")**  
**Certarus Ltd. Final Submissions**

**I. INTRODUCTION**

1. Further to the Ontario Energy Board's ("Board" or the "OEB") Procedural Order No. 2 dated October 30, 2019, this letter provides the written submissions of Certarus Ltd. ("Certarus") in the above-noted Proceeding.
2. The Corporation of the Town of Marathon ("Marathon"), in its own capacity and as the representative of the Township of Manitouwadge, the Township of Schreiber, the Township of Terrace Bay and the Municipality of Wawa (together, the "Municipalities"), has requested that the Board issue orders related to the North Shore LNG Project (the "Project") to develop, construct, own and operate a regional natural gas distribution pipeline system to supply gas to the Municipalities.
3. The Board must consider the public interest in issuing these orders. The Board has permitted Certarus to assist, as an intervenor, "... through the consideration of possible alternatives for the proposed gas supply plan and gas supply contract."<sup>1</sup>
4. As noted in its letters dated September 26, 2019 and October 11, 2019, Certarus is a leader in providing proven, fully-integrated compressed natural gas ("CNG") solutions to remote

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<sup>1</sup> OEB Procedural Order No. 2 (October 30, 2019) at page 3.

communities, micro-grids, power generation, and energy services in the North American market. Certarus currently provides CNG to customers located in Northern Ontario from its existing terminals in Timmins and Red Rock and has demonstrated experience providing distribution utility-compatible CNG supply services. Certarus' fully-integrated CNG offerings include compression, storage, transportation, and decompression facilities.

5. The fact Certarus is an existing supplier of CNG in Northern Ontario permits potential purchasers to avoid the risk associated with any competitive supplier's need to finance construction of its own new facilities; to avoid all risk associated with the commissioning of those new facilities; and to mitigate the risk of planned and unplanned outages of any single gas supply source during the operational phase.
6. The fact Certarus is an existing supplier of CNG sourced from the TC Mainline also permits potential purchasers to avoid the cost of new inter-connection facilities or provides additional delivery points should the LNG plant not be available to take delivery of gas for any reason.<sup>2</sup>
7. The existence of the proven and operational CNG supply option, can also provide the widely recognized competitive benefits for customers associated with an alternative source of supply.
8. Certarus has estimated that it is able to supply the stated needs of the new municipal distribution customers over the proposed 10 year term at operating costs \$20 million lower than the operating costs of landed liquefied natural gas ("LNG").<sup>3</sup> With ongoing supply operations conducted from two existing terminals located between 361 km and 635 km from the Municipalities, Certarus is well-positioned to provide these benefits to the new municipal distribution customers as soon as possible.
9. None of these benefits, however, will be available to future Northern Ontario gas customers unless the Board directs the Utility to provide an open access regime on the proposed municipal distribution systems. Certarus' attempts to obtain confirmation from Marathon that it would ensure open access on a level playing field to CNG suppliers from the outset of planned gas distribution operations highlight the need for related Board directions.<sup>4</sup>
10. As stated in its earlier correspondence, Certarus is not objecting to the granting of the approvals sought in the present Application.<sup>5</sup> The expeditious approval of the Applications relating to the construction and operation of the municipally-owned gas distribution systems, in particular, could create a new market opportunity for CNG suppliers like Certarus.

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<sup>2</sup> See Marathon response to OEB Staff Interrogatory 29 (a-d), pdf 64-65, regarding Nipigon LNG's need to pay for TC Energy interconnection facilities presumably required not just for Marathon's utility requirements, but for Nipigon's future customers not served by the proposed, new gas distribution systems; See also Marathon response to OEB Staff Interrogatory 37 (e) pdf 78 discussing potential subsidization of Nipigon's other customers.

<sup>3</sup> Certarus letter dated September 26, 2019, at para. 3.

<sup>4</sup> See Marathon responses to Certarus 5 (b) pdf 9; Certarus 15 (e), (f) pdf 27-28; Certarus 17 (a-c) pdf 31.

<sup>5</sup> Certarus letter dated October 11, 2019, at para 5.



11. Rather, Certarus seeks to ensure fair and open access to the gas distribution systems proposed by the Municipalities order to:
  - (a) enhance reliability of gas supply;
  - (b) ensure diversity of supply choice;
  - (c) provide lower-cost gas supply options for supplemental or incremental supply needs; and
  - (d) provide competitively priced supply should the commencement of the LNG services be delayed or interrupted.<sup>6</sup>
  
12. The principal issue, therefore, relates to removing any barrier or impediment to CNG access to these new markets. For that reason, Certarus respectfully submits that the related Approvals granted should be expressly conditioned to ensure fair and open access of these new gas distribution systems to all potential gas suppliers providing a level playing field upon which to enhance competition, enhance system reliability and to encourage maximum conversion to gas service at the earliest opportunity.
  
13. Certarus therefore recommends that the Board issue its orders subject to Terms and Conditions that:
  - (a) Require that the Utility design and construct interconnects in a manner that permits third-party providers of natural gas to connect to the municipally-owned gas distribution system;
  - (b) Otherwise ensure open – or, at least, equal – access to the distribution systems on a level playing field amongst all potential gas suppliers;
  - (c) Prohibit any provisions of the agreements for which approvals are sought which have the effect of favouring one gas supplier or gas supply type over another;
  - (d) Ensure that the Rates, Gas Supply Plan, and Cost Consequences are calculated based on information that fully and fairly takes into account all available gas supply options;
  - (e) Prohibit any contractual provisions that impose penalties or financial disincentives on municipalities or their customers should they seek to obtain alternative gas supplies;
  - (f) Prohibit the Utility from taking any actions or entering into any third party agreements which would allow the municipal distribution facilities from being used for the exclusive private benefit of only one gas supplier;

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<sup>6</sup> Certarus letter dated October 11, 2019, at para 4.



- (g) Direct Marathon to amend the Municipal Franchise Agreements to be explicitly open access in order that both suppliers and purchasers may compete on a level playing field;
  - (h) Direct Marathon to ensure that any upstream arrangements it may subscribe for on the TC Mainline be flexible, including in terms of delivery points, to permit gas to be delivered to LNG or CNG operators alike for subsequent CNG or LNG gas delivery service to the utility or to the utility's customers with no limitation as to the delivery point at which the gas may be taken from the TC Mainline.<sup>7</sup>
14. Certarus submits that approving the Application subject to the Terms and Conditions above would adequately safeguard the public interest and at the same time enhance both supply diversity and reliability, encouraging the maximum customer conversion to natural gas. Moreover, approval of the Application subject to these Terms and Conditions would also ensure availability of gas supply on a timely basis to match the physical commissioning of the municipal distribution systems independent of any risks or delays associated with the financing and construction of facilities necessary for one particular competitive source of LNG gas supply. The CNG gas supply option exists today at two terminals with ample capacity to serve the needs identified over the entire 10 year build up in forecast deliveries.

## II. SUBMISSIONS

### A. Physical and Contractual Open Access is in the Public Interest

15. Fair and open access requires several things. First and foremost, it requires the physical interconnection facilities for CNG to be provided by the host municipal utility (the "Utility") rather than located on lands owned or controlled by the competing LNG service provider at each LNG Depot. As noted in its response to OEB Staff 45 pdf 88 , Marathon would limit the interconnect to a connection just downstream of the LNG depot within the confines of the depot site.
16. Second, the interconnection facilities should be designed so as to maximize the number of potential suppliers to the Distribution System and to ensure that it is the Utility - and not a competing gas supplier (including but not limited to Nipigon LNG) - that operates them. Those interconnection facilities should include pressure management, metering and all other necessary facilities for utility service. For example, the cost of the construction and operation of odorization facilities should be the responsibility of the LNG supplier alone since odorant is only required to be added to re-gas; whereas Certarus' CNG must be odorized prior to transportation by truck. Locating the interconnection to the Distribution Utility on lands owned by a competing gas supplier or allowing one competitive supplier to operate those facilities, as currently contemplated by the Application, runs the risk of rendering the interconnection

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<sup>7</sup> See Marathon response to Certarus Interrogatory 16(b), pdf page 29, describing Marathon's intended restrictions; See also Marathon response to Certarus Interrogatory 9(j), pdf pages 18-19 where Marathon asserts diversions are common; however a cursory review of the publically available TC Mainline Tariff for North Bay Long Term Fixed Price service suggests not all firm services offer upstream and downstream diversions throughout the WDA and NDA.



inaccessible to other potential suppliers.<sup>8</sup> For example, in its responses to OEB Staff Interrogatory 24 (g) and 28 (a),<sup>9</sup> Marathon appears to contemplate that that Nipigon LNG would operate the SCADA system and the gas control function for the municipal gas distribution systems and issue all nominations to TC Energy. This raises real concerns for competitive suppliers of gas such as Certarus.

17. Third, the municipal franchises granted should require, in the public interest, that the facilities installed and the utility operations authorized be conducted on an open access basis creating a level playing field for all potential gas suppliers to compete on a non-discriminatory basis. Certarus respectfully submits that "open access" in this context should permit customers of the host municipal utility, and not just the utility itself, to be permitted to select the gas supplier of their own choosing to enhance competitive choice.
18. Accordingly, customers of the municipal utility should not be forced to deal exclusively with the sole LNG supplier pursuant to the restriction outlined in Marathon's response to Certarus Interrogatory 16(b) (at pdf 29) regarding a customer's right to access competing supplies, namely, "(a)ny customer who wishes to do so may procure its own natural gas and transportation to this delivery point".
19. The practical effect of restricting access to the Nipigon TC Energy delivery point is to extend the municipal distribution system upstream to Nipigon LNG conferring a monopoly on this particular LNG supplier. It is not in the public interest to saddle direct purchasers with the incremental LNG-related costs should they prefer to deal with a CNG supplier. In effect, this requirement excludes the CNG option, forcing the customer to use LNG.
20. It would be ironic if a publically funded utility was permitted to thereby exclude the CNG option entirely when, unlike the proposed LNG supplier, Certarus is already supplying Northern Ontario customers with safe and reliable natural gas supply service and has expressed its willingness and ability to meet the new utility's forecast gas requirements for the entire 10 year term should that be required.
21. Fourth, none of the approvals granted in respect of the gas supply plans should permit any preference to any particular gas supplier (including, but not limited to, LNG). Marathon's response to various OEB staff questions appear to invite the Board to reject contractual terms deemed undesirable in the public interest.<sup>10</sup> As noted by Marathon in response to OEB Staff Interrogatory 43 (a), for example, Marathon indicates as follows:

The LNG Service Agreement represents the terms and conditions required by Nipigon LNG as a condition of the design, development and construction of the LNG Depot and subsequent provision of the LNG Services to the Utility. However, the LNG Services Agreement has not yet been signed and to the

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<sup>8</sup> Marathon response to OEB Staff Interrogatory 11, at page 28. This statement is repeated at page 38 of Marathon's Argument-in-Chief; See also Marathon's response to OEB Staff Interrogatory 45, at pdf 88.

<sup>9</sup> Marathon responses to OEB Staff Interrogatory 24 (g) pdf 55 and OEB Staff Interrogatory 28 (a) pdf 62.

<sup>10</sup> Marathon response to OEB Staff Interrogatory 43 (a), pdf 86.

extent Board approval is conditioned on the amendment of certain terms of the LNG Services Agreement, such discussions can be undertaken with Nipigon LNG.<sup>11</sup> (emphasis added)

22. Any contractual terms which restrict the utility's choice of gas supply, which create financial disincentives to accessing gas supplies from competitive suppliers; or which oblige the utility to backstop the financial or operational risks of any particular gas supplier should be rejected as contrary to the public interest.<sup>12</sup> Any financial preference granted by an open access utility in favour of any particular source of gas supply creates an unlevel playing field, limits competitive choice and is inconsistent with the public interest, particularly where public funds are employed in aid of constructing the municipal utility system.
23. Demonstrably, it is a fact that gas supply is now available to supply the municipal distribution customer needs without the utility being required to assume the cost and risk of financing and constructing any particular gas supplier's facilities. That gas supply service is available today, eliminating potential supplier commissioning risk and delay. The evidence reflects Certarus is willing to supply CNG on terms equivalent to or more favourable than the landed costs of the LNG alternative identified in the Application.<sup>13</sup> Preferences accorded in terms of supply exclusivity and backstopping of LNG proponent development and construction risks are not required and would tilt the playing field decidedly in favour of a single, monopoly LNG supply option.
24. As noted in its earlier correspondence, there are many advantages to ensuring a level playing field by means of physical and contractual open access.
25. First, reliability will be enhanced. The utility's ability to ensure safe, reliable and economic service to residential, commercial, institutional (e.g., schools, seniors' homes, and hospitals) and industrial customers is clearly benefitted by having access to alternative sources of supply. Provided the approved facilities design and the approved financial arrangements provide a level playing field and open access, Certarus is able to supply gas today with no requirement to financially backstop any incremental facilities development and risk. Certarus also is able to provide lower cost gas supplies today to northern Ontario customers in the event of delay in the availability of the LNG supply and in the event of planned and unplanned LNG Plant or LNG Depot outages during operations.
26. Respectfully, the public interest requires the availability of back-up supplies for schools, seniors' homes, hospitals and residential and commercial customers for two reasons. First, reliability of gas supply during peak winter demand conditions is an obvious public interest imperative. Second, enhanced reliability of gas supply provides potential consumers with the

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<sup>11</sup> Marathon response to OEB Staff Interrogatory 43, at pdf 86. See also Marathon Response to OEB Staff Interrogatory 47 (b&c), pdf 91-92, which indicates the LNG Service Agreement has not been signed and will need to be amended to reflect the Board's terms and conditions of approval.

<sup>12</sup> See Marathon responses to OEB Staff Interrogatory 37 (d),(e), pdf 78, regarding backstopping Nipigon LNG for all project costs despite the design contemplating service to other customers beyond simply the municipal gas distribution customers; See also, Marathon response to OEB Staff Interrogatory 43 (a), (b), pdf 86, regarding Utility liability for Nipigon LNG costs in the event regulatory of governmental approvals cannot be obtained.

<sup>13</sup> Certarus letter, September 26, 2019, at para. 3.



confidence that there would be little risk in converting from their present source of energy supply.

27. While reliability did not appear to be emphasized in the evidence, Certarus respectfully submits that ensuring multiple supply options from the outset should be accorded significant weight by the Board when balancing its various public interest criteria. In particular, the Board may wish to reflect on the fact that, in the event of a failure or malfunction of any of the LNG Depot's regasification processes, CNG is the only supply option available to connect to the municipal gas distribution system to ensure continued safe and reliable gas supply to customers without a dual fuel capability.
28. Moreover, supply diversity creates competitive benefits. As stated previously, Certarus is convinced that it can supply gas competitively at prices below the landed cost of re-gasified LNG indicated in the Application.<sup>14</sup> The opportunity to provide lower cost gas supplies could accelerate natural gas conversions to the benefit of all municipal utility customers.
29. In this regard, Certarus recognizes that the municipal Utility identified minimum contract quantities it will be contractually obligated to purchase from its preferred LNG supplier. Certarus respectfully requests that should the Board be disposed to now approve any particular gas supply plan, it should further direct the Utility, at a minimum, to conduct a fair, open and competitive process for securing any gas supplies beyond those minimum quantities already contracted; and to permit the Utility's own customers to secure competitive LNG and CNG gas supplies of their own choosing.
30. Certarus' CNG supply option provides considerable advantages in the public interest. As outlined in further detail below, the studies completed by Marathon prior to and as part of the Application are deficient and should not limit the Board's assessment of gas supply alternatives as part of the broader public interest.

#### **B. Marathon's assessment of available gas supply alternatives is inadequate**

31. From the outset, Certarus has challenged the facts relied upon by Marathon in dismissing CNG as a supply option. Respectfully, the evidence presented by Marathon regarding the availability and cost of CNG as a supply option is demonstrably wrong and cannot be relied upon by the Board. Regardless whether Marathon believed it would be possible, the obvious fact is that Certarus is now supplying CNG from two permanent supply hubs in Northern Ontario. That fact alone belies Marathon's rationale for dismissing CNG for reliability benefits and as a competitive option for its customers.
32. Indeed, the record discloses a continuing disregard of any supply option other than LNG.
33. Under the Board's procedures for the present Application Certarus has not been provided an opportunity to respond to or to test the new evidence adduced by Marathon in its "Foreword"

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<sup>14</sup> Certarus letter dated September 26, 2019, at para. 3.



to the responses to Certarus' interrogatories. This is of particular concern as it relates to the information previously exchanged regarding the Certarus CNG option.

34. As noted in its October 11, 2019 letter, for example, Mr. Ough had contacted Marathon regarding a Certarus supply CNG option. Given Marathon acknowledges Certarus was not interested in owning or developing gas distribution systems, the fact Certarus nevertheless wanted to meet indicates its interest in gauging Marathon's interest in a CNG supply option.
35. What is clear from the limited evidence filed by Marathon is that neither it nor Nipigon LNG were interested in opening up their arrangement to third party natural gas suppliers. With respect, the cost savings, reliability and diversity benefits of a real CNG option like Certarus (unlike the straw-models erected in the Application) have never been seriously considered.
36. The long-term impact upon Northern Ontario customers clearly should be assessed before excluding CNG as a supply option to the new municipal gas distributors. No delay in municipal distribution gas service need occur since ample CNG gas supplies are available today on terms more favourable than those outlined in the Application.

*Feasibility Study and Gas Supply Plan Failed to Consider All Options*

37. Certarus does not question Marathon's right to obtain natural gas from the supplier of its choice. Instead, Certarus highlights the following shortcomings in Marathon's premature choice and narrowly-scoped diligence to emphasize why it is critically important that the Board impose conditions to ensure open access to ensure a level playing field and open access to CNG as an alternative supply.
38. Given the serious flaws in the analysis relied upon to exclude CNG as a supply source for the municipal utility's customers, Certarus respectfully requests the Board to carefully consider the following.
  - (a) In defending its gas supply plan, Marathon has stated that "other gas supply options were ruled out early in the planning process for reasons having to do with availability and cost"<sup>15</sup> and that "the gas supply and distribution project [...] that underpins the North Shore LNG Project Application [...] was conceived and initiated as a Liquefied Natural Gas [...] project."<sup>16</sup> A close review of the timeline of the Project's development demonstrates that the sponsors appear to have preferred the LNG option and dismissed the CNG option on the basis of a flawed analysis. Respectfully, the long term cost consequences of a failure to objectively consider all available gas supply options should not be visited upon the new gas distribution customers.
  - (b) Marathon's first feasibility study was conducted in 2016 (the "2016 Feasibility Study")<sup>17</sup> in partnership with LNG producer Northeast Midstream LP. Northeast

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<sup>15</sup> Marathon Argument-in-Chief, December 11, 2019, at para. 68.

<sup>16</sup> Letter from Helen T. Newland on behalf of Marathon in response to Certarus' Application to Intervene (October 3, 2019), at page 2 (emphasis added).

<sup>17</sup> Exhibit A, Tab 9, Schedule 4, Attachment 2.





Midstream LP is a special purpose limited partnership that is managed by its general partner, Nipigon LNG Corp. ("Nipigon LNG"), a wholly-owned subsidiary of Northeast Midstream Corp and the proposed LNG provider for the Project.<sup>18</sup>

- (c) The 2016 Feasibility Study contains no discussion of CNG or other alternatives. Rather, it simply concludes that "Liquefied natural gas (LNG) was chosen as the optimal gas supply solution for the Municipalities".<sup>19</sup> Unlike the study's annual demand forecast, which was grounded in an independent study included in the Application,<sup>20</sup> Marathon and Northeast Midstream LP provided no basis for their conclusion that LNG is the optimal gas supply solution.
- (d) In November 2017, Marathon and Certarus met to discuss potential CNG supply. The parties' interpretation of the conclusions reached in this meeting differ.<sup>21</sup> Regardless, Marathon notes that "By this point in time [*i.e.*, *November 2017*], development work on the Project was proceeding based on the assumption that the Project would rely on LNG."<sup>22</sup> Certarus interprets this statement to mean that Marathon was no longer receptive to a CNG supply option.
- (e) Certarus' position, however, is that though it indicated it was not interested in owning or operating a gas distribution system, that does not lead to the conclusion that CNG should be excluded as a viable gas supply option.<sup>23</sup> Given Certarus was not interested in owning or operating a municipal gas distribution system, there would be no reason for Mr. Ough nevertheless to seek out Marathon unless he wished to discuss a CNG supply option.
- (f) Respectfully, Marathon's reaction to Certarus' approach should be interpreted in light of its demonstrated preference for a sole-sourced LNG option. It is apparent that actual CNG development costs or delivered prices from an existing CNG supplier like Certarus were never seriously considered.
- (g) While Marathon's comments appear to suggest that, by November 2017, the project was too far along to consider alternate gas supplies,<sup>24</sup> Marathon did not receive a grant "... to fund detailed engineering and design, regulatory approvals and project management and administration for the North Shore LNG Project" until March 2018,

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<sup>18</sup> Northeast Midstream, "Nipigon LNG Project" online: <<http://northeastmidstream.com/regulatory.php>>.

<sup>19</sup> Exhibit A, Tab 9, Schedule 4, Attachment 2, at page 5 of 6.

<sup>20</sup> See the June 2016 Innovative Research Group Inc. "North Shore Community NG Forecasting Survey – Summary Report" (June 2016) included at Exhibit A, Tab 4, Schedule 1, Attachment 1 of Marathon's Application Update, August 15, 2019 (pdf 53-74); See also Exhibit A, Tab 9, Schedule 4, Attachment 2, at page 3 of 6 (pdf 200).

<sup>21</sup> Marathon understood that the "... the Certarus business model did not contemplate supplying CNG for residential loads served by pipeline and was, instead, targeting commercial and industrial loads that could accept trucked delivery of CNG" (Marathon response to Certarus Interrogatory at Foreword), while Certarus understood that it had communicated that it had no intention of owning and operating a gas distribution system (see Certarus letter dated October 11, 2019 in response to Marathon's objection to Certarus' Application to Intervene).

<sup>22</sup> Marathon response to Certarus Interrogatory at Foreword, page 2 of 34.

<sup>23</sup> Certarus letter dated October 12, 2019, paras. 19-23.

<sup>24</sup> See Marathon response to Certarus Interrogatory at Foreword; Marathon Argument-in-Chief at para. 68.



four months after meeting with Certarus.<sup>25</sup> The grant of \$3.45 million from the Northern Ontario Heritage Fund Corporation ("NOFHC") is still being used to support the ongoing development of the Distribution System, including applications for the regulatory approvals required to move the Project to the next stage of development.<sup>26</sup> This grant presumably funded, at least in part, the July 2019 Elenchus Research Associates Inc. ("Elenchus") North Shore Gas Supply Plan ("Gas Supply Plan")<sup>27</sup> which forms part of the Application.

39. Based on the foregoing timeline, it is clear Marathon was aware of Certarus' CNG supply option before it received public funding to conduct detailed engineering and planning, and therefore had ample opportunity to consider alternate forms of gas supply.
40. It is Certarus' respectful submission that Marathon's argument that CNG was simply not available at the time of planning is incorrect. Ruling out the CNG option "for reasons having to do with availability and cost" without the input of third parties like Certarus or without permitting its experts to include CNG in their feasibility studies is unreasonable and contrary to the long term interests of potential Northern Ontario gas consumers.

### **C. Marathon's CNG Cost Assumptions Are Unfounded and Incorrect**

41. Gas supply was predominantly considered in two studies: first, the July 2019 Elenchus Gas Supply Plan, and second, the Application for Pre-Approval of Cost Consequences of Long-Term Contract included in Marathon's August 2019 Application. Marathon's purposeful exclusion of CNG alternatives is reflected in both.

#### *July 2019 Elenchus Gas Supply Plan*

42. Marathon deliberately excluded CNG from the Elenchus Gas Supply Plan completed in July 2019.<sup>28</sup> Marathon has confirmed that Elenchus' scope of work for the Gas Supply Plan dated February 21, 2019, initially included CNG.<sup>29</sup> At the time it submitted its proposal to develop that Gas Supply Plan, Elenchus appears to have been aware that trucked CNG was a real supply option (see 3(a) iii below):

#### 3) SCOPE OF WORK

In order to complete the Gas Supply Plan, Elenchus will use the Municipalities' current long-term demand forecast and supply related work done by the Municipalities where available. These options will be updated as necessary Elenchus will evaluate the potential supply options available, including costs, risks and quality of service and rate impacts related to such potential supplies.

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<sup>25</sup> Marathon response to Certarus Interrogatory at Foreword; See also Marathon's Application Update, August 15, 2019, Exhibit A, Tab 9, Schedule 4, Attachment 2, Page 1 of 1 (pdf 204).

<sup>26</sup> Marathon Argument-in-Chief, at page 28 of 45.

<sup>27</sup> Marathon's Application Update, August 15, 2019, Exhibit A, Tab 8, Schedule 1, Attachment 1 (pdf 130-187).

<sup>28</sup> Marathon's Application Update, August 15, 2019, Exhibit A, Tab 8, Schedule 1, Attachment 1 (pdf 130-187).

<sup>29</sup> Marathon response to Certarus Interrogatory 4(c), Attachment A, at page A-3 (pdf 37-38 of 41).

- a) Elenchus anticipates evaluating three alternative supply options including:
- i. Traditional pipeline supply piped to each of the municipalities,
  - ii. A trucked LNG supplied by Nipigon LNG, and
  - iii. A trucked CNG supply to each municipality
- b) Utilizing the demand forecast, each of these options will be evaluated for:
- Capital cost of each option
  - Commodity costs and other operating costs (fixed and variable) associated with the delivery of natural gas (e.g. transportation, storage, etc.), for each option.
  - Rate implication of each supply option
  - The relative risks of each supply source
  - Quality of service of each option
  - Potential cost and risk mitigation strategies for each option
  - Assessment of the potential for storage associated with the supply option,
- c) Based on the analysis, Elenchus will provide an overall recommendation to meet the best supply plan taking into account costs (and rate impact), reliability and quality of service.
- d) Elenchus will also:
- Provide suggested supply procurement policies,
  - Identify any readily available renewable natural gas options available, or other public policy initiatives,
  - Identify any long-term contracts that may be desirable to mitigate costs and risks or otherwise may be required to develop the appropriate infrastructure
  - Identify gas supply performance metrics for future evaluation of the plan, and  
Identify areas of continuous improvement.

Completion of the work as outlined presumes that Elenchus is also developing the rate model for the project as this will be necessary to assess the customer impact. (emphasis added)

43. Notwithstanding its respected market expert's proposed scope of study, Marathon directed Elenchus to restrict that scope to exclude CNG. As Marathon noted in its response to Certarus' Interrogatory 4 (a) and (b):

a)&b) Elenchus was retained by the Corporation in 2019 to develop a Gas Supply Plan in accordance with the OEB's requirements in this regard. Elenchus was instructed by the Corporation that the plan should be premised on a project supplied by LNG. Elenchus was instructed by the Corporation that the plan should be premised on a project supplied by LNG.<sup>30</sup> (emphasis added)

44. As a result, the Gas Supply Plan does not include an accurate accounting of gas supply options available at the time it was prepared. As the same interrogatory response reveals, CNG was not even included as a potential option for more limited purposes in terms of back-up facilities in the Gas Supply Plan.<sup>31</sup>

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<sup>30</sup> Marathon response to Certarus Interrogatory 4, page 7.

<sup>31</sup> See section 2.7.2, section 2.8.4.2, Appendix 2 Risk Analysis Part 3a "Extend Plant failure" and Part 4 "Weather-related road closure".



45. The facts, however, are that when Elenchus prepared its proposed scope of work for Marathon in February 2019,<sup>32</sup> Certarus' CNG terminal at Timmins had been fully operational for three months (*i.e.*, since December 2018) and its Red Rock terminal was on track to commence operations nine months later in November 2019.
46. Certarus submits that the purpose of retaining Elenchus to prepare a Gas Supply Plan was to provide an independent, reliable, third-party assessment of the cost and feasibility of gas supply options to be relied upon by intervenors and the Board as part of the assessment of the reasonableness of the proposed Gas Supply Plan and delivery options. Instead, by eliminating CNG from the scope of its expert market study, Marathon has undermined the value of the Gas Supply Plan and deprived the Board of the ability to fully compare available gas supply opportunities and plans in the public interest.
47. In addition to providing an incomplete picture of available gas supplies available to the Municipalities, the exclusion of CNG from the scope of the Gas Supply Plan results in an incomplete review of the Project's risks and reliability. As noted above, for example, the Risk Analysis included in the Gas Supply Plan lacks any discussion of CNG as a potential alternate gas supply in case of emergency (particularly at each of the LNG Depots), rendering it an incomplete assessment of the Project's reliability.
48. By directing Elenchus to ignore CNG, Marathon deprived the Board of a full assessment of the Project's reliability and risk profile. With respect, Marathon's singular focus on the LNG supply option also raises questions about the credibility of its other representations about the cost and feasibility of the CNG option.

*August 2019 Pre-Approval of Cost Consequences of Long-Term Contract*

49. In addition to directing its expert consultant to exclude CNG from the scope of the Gas Supply Plan, Marathon has also confirmed that its assessment of the cost or feasibility of CNG is addressed only in the Application for Pre-Approval of Cost Consequences of Long-Term Contract submitted to the Board in August 2019.<sup>33</sup>
50. In the absence of any third-party study or report, Certarus questions both Marathon's use of the information provided in the comparative cost analysis of gas supply options ("Comparative Cost Analysis") well as the accuracy of its contents.
51. Marathon's Comparative Cost Analysis either relies on incorrect assumptions or utilizes unsupported data to conduct its comparative analysis. Marathon's modeling, for example, is predicated on the assumption that the Utility would need a new build and operate a CNG facility to be constructed and operated solely for its needs including the provision of

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<sup>32</sup> Marathon response to Certarus Interrogatory, Attachment A to Certarus Interrogatory 4 c), page A-2.

<sup>33</sup> Marathon response to Interrogatory Certarus 2, page 5; Marathon directed Certarus to pages 10 to 15 of Marathon's Application for Pre-Approval of Cost Consequences of Long-Term Contract (Exhibit A, Tab 13, Schedule 1) and its response to OEB Interrogatory 11(a), which is supporting data for the same report.



compression, storage and decompression services; and general responsibility for the capital cost of the CNG production plant, trailer modules, and local decanting depots.<sup>34</sup>

52. These assumptions are simply incorrect. At the time the Comparative Cost Analysis was prepared in 2019, Certarus was already supplying utility-ready, de-risked natural gas directly to several industrial customers in Northern Ontario and would be able to supply utility customers without any capital or commissioning cost to the Utility. Marathon's basic assumption regarding the costs of a CNG option represents a gross overstatement of \$42 million which was based on the demonstrably incorrect assumption that the following capital costs would be required by a CNG option:
- (a) Construction and commissioning of a greenfield CNG production plant near Nipigon: this capital cost is redundant given a fully-operational CNG Terminal was already in operation in Timmins and a second terminal planned for (and since constructed) in Red Rock;
  - (b) Purchase of CNG trailer modules designed specifically for bulk transportation and storage of large amounts of CNG: this capital cost would be unnecessary where trailer modules are already provided as part of ongoing CNG supply services; and
  - (c) Construction and commissioning of local decanting depots within each community: this capital expenditure would not be required where existing, available CNG trailers can deliver appropriately pressurized, odorized natural gas directly into a utility system.<sup>35</sup>
53. Removal of \$42 million in costs from Marathon's estimates, even without any other adjustments for accuracy, renders CNG a highly competitive option. Moreover, the fact Certarus was already sourcing gas off the TC Energy Mainline at two existing TC Energy delivery points obviates the need for Marathon to have to pay the full costs of a new interconnect for Nipigon LNG despite the fact that interconnect and Nipigon's LNG liquefaction plant will be sized and used to also supply its other non-utility customers in the future.
54. While Marathon may suggest that these options were not available at the time of its feasibility studies, Certarus notes that Marathon has been aware of CNG since November 2017, well before Marathon received government funding to complete its Gas Supply Study and well before the Application was filed in August 2019.
55. In addition, the analysis of CNG options submitted in the Application uses unfounded financial assumptions. When questioned by the Board on how Marathon derived the numbers used to estimate CNG Landed Costs, Marathon provided the data used to obtain its calculation but no information on the source of that data other than indicating some information was obtained

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<sup>34</sup> Marathon Argument-in-Chief, at para 85.

<sup>35</sup> Marathon's Application Update, August 15, 2019, Exhibit A, Tab 13, Schedule 1, at page 12 of 17 (pdf 274), lines 9-18.



from Cornerstone Energy.<sup>36</sup> This financial data is otherwise unsupported and provided without important context including facility location, capacity, and service specifications.

56. In addition to having no independently verified numbers following the exclusion of CNG from Elenchus' report, Marathon's application contains no discernible attempt to verify with an actual CNG operator the CNG costs outlined in the Application, let alone one already conducting business in Northern Ontario. There should be no possible downside in doing so. Regardless, there is no evidence that Elenchus, Cornerstone or Marathon made any effort to seek such information, despite the fact that which throughout the Application preparation process, Certarus was actually expanding its operations in Northern Ontario closer to the municipalities in question.
57. As Certarus indicated in its Application to Intervene in this proceeding, its CNG supply service is positioned to fulfill the Municipalities natural gas requirements today at operating costs \$20 million lower than the operating costs of landed LNG over the 10-year term proposed by Marathon.<sup>37</sup>
58. Given the deficiencies in the filed evidence regarding the benefits of the CNG option, rather than allowing Marathon to exclude the CNG supply option in the manner outlined above, Certarus would welcome the opportunity to provide the Board, should it so require, additional detailed information on how it is in a position to provide the Municipalities and the Utility with either a) a competitive gas supply service on a tolling basis, or b) delivered natural gas sales directly into the Distribution System.
59. In the circumstances, therefore, Certarus respectfully submits that the Board should reject Marathon's entire analysis of the CNG option; and that it should impose the appropriate Terms and conditions of its approval to ensure that CNG should not be eliminated from consideration as a supply option for Northern Ontario customers of a publically funded municipal utility.

#### **D. The Proposed LNG Services Agreement is Unnecessarily Burdensome and May Restrict Municipal Utility Purchase Options**

60. The LNG Services Agreement requires the Municipalities to take on considerable risk associated with the construction of the LNG Facilities which, as defined in the LNG Services Agreement, include the Nipigon LNG Terminal and the Nipigon LNG Depots.<sup>38</sup> Certarus respectfully submits that, in comparison to other gas supply offerings, the terms required to underwrite a greenfield LNG arrangement, as proposed in the LNG Services Agreement, are both unnecessary, burdensome and not in the public interest.
61. Specifically, the following requirements of the LNG Services Agreement would not be required where natural gas is supplied by an alternative gas supplier such as Certarus:

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<sup>36</sup> Marathon response to OEB Staff Interrogatory 11(a) and Attachment A.

<sup>37</sup> Certarus letter dated October 11, 2019, at para. 3.

<sup>38</sup> Marathon's Application Update, August 15, 2019, Exhibit A, Tab 13, Schedule 1, Attachment 5, page 6 (pdf 291) at s 1.1(hh).



- (a) The delivery of natural gas to the Utility and the Distribution System is contingent upon Nipigon LNG meeting the Conditions Precedent to LNG Service ("Conditions Precedent"): The Conditions Precedent include, *inter alia*,
- (i) Nipigon LNG, in its sole discretion, making a positive final investment decision;
  - (ii) Nipigon LNG having in place the necessary agreements to effect natural gas pipeline interconnection facilities with the TransCanada Mainline Pipeline, and such interconnection facilities having been commissioned and placed into service;
  - (iii) Nipigon LNG obtaining all required governmental, regulatory and Third-party approvals;
  - (iv) Nipigon LNG completing the LNG Facilities.

In contrast, Certarus is ready and able to provide gas service on a tolling or commodity basis today.

- (b) The Utility and the Municipalities Bear the Commissioning Risks of LNG Facilities: The Municipalities/Utility are responsible for all costs incurred or accrued by Nipigon LNG for the construction and development of the LNG Depots if Nipigon LNG - not the Municipalities or the Utility - is unable to meet its Conditions Precedent listed above.<sup>39</sup> While Marathon noted in its response to Certarus Interrogatory 8(c) that the Utility could seek gas supply elsewhere if Nipigon LNG fails to meet any Condition Precedent within the specified timeframe, Marathon failed to note that the financial burden of doing so remains with the Utility and the Municipalities.<sup>40</sup>
- (c) If constructed, the Utility and the Municipalities Remain Liable for Recovery of the Capital Investment in the LNG Facilities: The Customer remains responsible for the charge to recover the capital investment in the LNG Facilities over a period of ten years. This charge applies regardless of whether the Customer uses the LNG Services set out in Schedule D (which includes the Nipigon LNG Depot Facilities) and regardless of LNG's relative competitiveness of landed supply to the inlet of the gas distribution system relative to other supplies. Moreover, the fact Nipigon LNG may also size and use its LNG Plant to serve other non-utility customers raises concerns about unfair cross-subsidization of Nipigon LNG's non-utility business.
- (d) Certarus has also noted above the fact that new TC Energy interconnection costs are not required for its CNG supply option since CNG is already receiving gas at existing TC Energy delivery points (near Timmins and Red Rock). For that reason, it would not appear reasonable that the utility or its customers be required to backstop Nipigon

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<sup>39</sup>Marathon's Application Update, August 15, 2019, Exhibit A, Tab 13, Schedule 1, Attachment 5, page 23 (pdf 308) at s 10.4.

<sup>40</sup> Marathon response to Certarus Interrogatory 8(c).



LNG's related TC Energy development costs which other, alternative gas suppliers such as Certarus have borne themselves. Alternatively, Marathon could avoid backstopping those costs altogether by choosing to simply purchase natural gas (CNG or LNG) on a delivered basis should a tolling option appear too expensive.

62. Respectfully, the risk and potential costs imposed on the utility and its customers associated with the development, financing, construction and operation of the facilities owned by a single competitor, unfairly tilts the playing field in favour of Nipigon LNG to the prejudice of other existing and future sources of competitive supply such as CNG.

*Force Majeure*

63. Certarus also notes that the *force majeure* of the LNG Services Agreement contains no provision addressing – or allowing - the delivery of alternate gas supplies should LNG delivery be unavailable. In the interest of reliability and maximizing the Utility's flexibility in case of *force majeure* conditions, Certarus recommends that this provision be broadened to expressly permit the use of alternative gas supply, such as CNG.

### III. CONCLUSION

64. In light of the foregoing, Certarus respectfully submits that the evidence upon which Marathon relies regarding the availability and cost of CNG is flawed and unreliable. Whether the Ontario public interest is best served by such a blinkered assessment of the options - particularly where a respected independent, expert market analyst itself proposed to consider CNG but was prevented from doing so - is up to the Board.
65. In Certarus' experience, when considering the public interest, regulators generally prefer the most up-to-date information available. Clearly, that evidence was available during the preparation of both the Application and the market studies on which Marathon relies. The conclusions advanced regarding the availability and cost of the CNG option are obviously wrong and cannot be relied upon by the Board.
66. For the purposes of the present Application, for the purposes of supply diversity, competitive pricing, supply and system reliability, the approvals granted should ensure that CNG is included as a potential supply source to the new municipal distribution customers.
67. Certarus stands ready, with a proven, competitive gas supply service to supplement or replace Marathon's preferred LNG supply should it be delayed, fail to proceed or is disrupted during operations for any reason due to planned or unplanned outages.
68. Certarus only requests that the Board ensure fair, open and transparent access to the market and the customers served by the new utility on a level playing field where no preferences or advantages are conferred contractually or otherwise upon any particular source of supply.





#### IV. RECOMMENDED CONDITIONS FOR BOARD APPROVAL

69. For the reasons outlined above, Certarus requests that the Board grant the Application pursuant to the Terms and Conditions outlined in paragraph 13 of this Argument.
70. Should you have any questions, please do not hesitate to contact the undersigned.

Yours truly,



L.E. Smith

LES:SR/lk

cc: Clint Warkentin, Certarus Ltd.  
Parties in Proceeding EB-2018-0329  
Ritchie Murray, Ontario Energy Board  
Michael Millar, Ontario Energy Board