

Long Lake #58 First Nation

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January 6, 2020

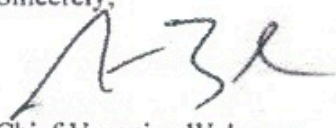
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary

Dear Ms. Long:

Re: Corporation of the Town of Marathon - North Shore LNG Project
File Number: EB-2018-0329
Long Lake #58 First Nation Final Submission

Please find enclosed the final submissions of Long Lake #58 First Nation, submitted pursuant to Procedural Order No. 2.

Sincerely,


FOR Chief Veronica Waboose
Long Lake #58 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.

EB-2018-0329

FINAL SUBMISSION

LONG LAKE #58 FIRST NATION

January 6, 2020

A. Introduction

1. LL#58FN is a “band” pursuant to *the Indian Act*, RSC 1985, c-1-5, comprised of over 1400 members, 450 of which live on reserve along the northeast shore of Long Lake adjacent to the town of Longlac, ON. Additional LL#58FN members reside in the Town of Marathon, the Township of Manitouwadge, the Township of Schreiber, the Township of Terrace Bay and the Municipality of Wawa (collectively “the Municipalities”).
2. LL#58FN is governed by an elected Chief and Council.
3. LL#58FN holds Aboriginal rights, including rights to harvest, hunt, trap, fish and practice other cultural pursuits within its home lands (“Traditional Territory”). It has made continuous use of the lands and resources within its Traditional Territory.
4. LL#58FN has never ceded, surrendered or in any way relinquished title or rights to its Traditional Territory and continues to hold title, exercise rights and jurisdiction. LL#58FN has never entered into a treaty with the Crown and is not a signatory to either Treaty 9 or the Robinson-Superior Treaty.
5. The North Shore LNG Project (the “Project”) would traverse the south-east portion of LL#58FN’s Traditional Territory. LL#58FN members have historically used the south-east portion of their Traditional Territory for hunting and fishing camps, travel routes, social events and practicing other cultural pursuits.
6. The area was used extensively for travel between LL#58FN and the Pic Moberg First Nation due to strong familial bonds between the groups. The south-east portion of the Traditional Territory was also used historically for fur trade, which the members of LL#58FN relied upon as their primary source of income until the 1950s. Many families utilized the area to the south of Long Lake and along the Moberg River to pursue this line of work.

7. LL#58FN adheres to strict principles regarding the preservation and protection of the land, air and water within its Traditional Territory.
8. LL#58FN has inherent rights and interests in the protection of its Traditional Territory, including rights recognized and affirmed by section 35 of the *Constitution Act*, 1982. These constitutionally protected rights and interests could be impacted at all stages of the Project, including planning, development, construction and operation.
9. LL#58FN considers itself a progressive First Nation that recognizes the need to generate sustainable economic development opportunities and to participate in the regional economy. Led by an economic development team, LL#58FN has negotiated with industry and government to create numerous business opportunities for its community. LL#58FN understands the importance of these relationships and takes its responsibilities seriously. A fundamental component of these partnerships is the LL#58FN Engagement and Accommodation Protocol. The Engagement and Accommodation Protocol is a living document that is continually updated based on current case law. It has been the basis of effective consultation processes between LL#58FN and organizations such as Greenstone Gold, NextBridge and Hydro One.
10. LL#58FN does not oppose the Project or the granting of any of the requests of the Municipalities subject to the appropriate conditions imposed by the Ontario Energy Board (“Board”) as outlined below. The purpose of this submission is to emphasize the importance of meaningful consultation moving forward, the potential archaeological significance of the Project area to LL#58FN and LL#58FN’s role as stewards of the environment.

B. Continuing and Meaningful Consultation

11. LL#58FN was identified by the Ministry of Energy, Northern Development and Mines (“MENDM”) as a First Nation who should be consulted on the basis that it has constitutionally protected rights that could be adversely affected by the Project.

12. In this case, MENDM delegated the procedural aspects of the duty to consult to the Municipalities who in turn retained Stantec Consulting Ltd. (“Stantec”) to conduct its consultation efforts.
13. It has been noted that “effective consultation with ... affected Indigenous communities... is extremely important. These stakeholders should be kept fully informed (*sic*) to comment on the project at each step before critical decisions are made.”¹ The last time LL#58FN was contacted by Stantec in relation to the Project was in July 2019. The Project team spoke with the LL#58FN Band Manager on the phone who requested to be kept updated as the Project progresses.
14. In its Application to the Board, the Municipalities state that “an *extensive* consultation program was undertaken for the Project, including the development and maintenance of a stakeholder and Indigenous contact list (emphasis added).”² Stantec has contacted LL#58FN by email or telephone approximately three times. It is submitted that this does not constitute “extensive consultation” and that simply maintaining a contact list is not consultation.
15. Neither the Municipalities nor Stantec are in possession of LL#58FN’s Engagement and Accommodation Protocol. Neither party has ever requested it. It is LL#58FN’s position that *extensive* consultation, at the very minimum, must be guided by this document.
16. LL#58FN expects to be consulted throughout the life of the Project. Had the Municipalities, for example, informed LL#58FN of these proceedings and the opportunity to intervene, LL#58FN may have become involved at an earlier date. This is but one example of the importance of diligent and open communication between proponents and stakeholders. LL#58FN emphasizes the need for ongoing dialogue between a proponent, or its hired consultant, and a First Nation. Furthermore, while email and telephone contact is useful, meaningful engagement and consultation is best accomplished with person-to-person interaction. Contacting a First Nation with the goal of completing a chart or checking a box

¹ *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario*, 7th Edition (2016) at page 15 (“Environmental Guidelines”).

² Corporation of the Town of Marathon Application, Exhibit A, Tab 4, Schedule 5 at page 1.

does not achieve consent. Meaningful consultation is about relationship building and relationship building takes time.

17. LL#58FN accepts that Stantec, on behalf of the Municipalities, has begun consultation efforts but emphasizes that this as an ongoing duty. The Municipalities have committed to “continue engaging with Indigenous groups as the Project moves forward.”³ They have undertaken to engage “in open and transparent dialogue” and to “offer meaningful opportunities for the exchange of information, responding to inquiries, and hearing and responding to any interests and concerns that may arise, including those related to potential economic and business opportunities.”⁴ Moreover, they have “committed to continue their engagement ... throughout the development, construction and operational phases of the Project.”⁵ LL#58FN will hold the Municipalities to these obligations. Furthermore, LL#58FN expects that MENDM will fulfill its responsibility to “continue to coordinate with [the Municipalities] with respect to the duty to consult beyond the Board’s approval of the project.”⁶

18. It is the Board’s responsibility to “assess the adequacy of the Crown’s consultation efforts as part of the leave to construct hearing process.”⁷ LL#58FN disagrees with the Municipalities’ submission that it has discharged its consultation obligations.⁸ Consultation is an ongoing, iterative process. LL#58FN respectfully submits that a Leave to Construct approval from the Board should include conditions requiring the Municipalities to engage in continued meaningful consultation throughout the life of the Project.

³ *Proposed North Shore LNG Pipeline Project: Township of Manitowadge, Environmental Report Impact Identification, Assessment and Mitigation July 29, 2019* at page 4.38.

⁴ Corporation of the Town of Marathon’s Response to Anwaatin Inc. Interrogatory-8 at page 12.

⁵ Corporation of the Town of Marathon’s Argument-in-Chief at para. 56 at page 25 (“Argument”).

⁶ Environmental Guidelines at page 9.

⁷ *Ibid.*

⁸ Argument at para. 60 at page 26.

C. Archaeology

19. LL#58FN's Traditional Territory was used historically for hunting and fishing camps, travel routes, social events and the practice of other cultural pursuits. The Project's trajectory through the south-east portion of LL#58FN's Traditional Territory could lead to the discovery of archaeological resources of cultural importance to LL#58FN.
20. LL#58FN expects to be informed of any continuing archaeological assessments including the Stage 2 assessment as well as the monitoring roles associated with this process.
21. LL#58FN must be notified should any item of archaeological significance be discovered. LL#58FN expects proponents to follow the LL#58FN archaeological protocols which state that archaeological sites should be mitigated in whole or in part by avoidance and preservation. Indeed, had Stantec thoroughly consulted with LL#58FN it would have been fully aware of LL#58FN's archaeological protocols.
22. LL#58FN respectfully submits that a Leave to Construct approval from the Board should include a condition giving interested First Nations the ability to choose and approve the archaeologist used for any further assessments, including the Stage 2 work.

D. Environment

23. LL#58FN adheres to strict principles regarding the preservation and protection of the land, air and water within its Traditional Territory. As such, LL#58FN would be remiss if it did not emphasize that natural gas is a non-renewable fossil fuel and that the development of additional fossil fuel infrastructure will be required by the Project. LL#58FN stresses that clean energy alternatives should be explored and implemented whenever feasible. It is respectfully submitted that any Leave to Construct approval should be contingent on a proponent having presented renewable energy alternatives.

24. LL#58FN has not been sufficiently informed about the safety of cryogenic trucks carrying fossil fuels through its Traditional Territory. In a letter dated November 21, 2019 to Registrar and Board Secretary, Christine Long, Dennis Wong of Dentons Canada, writing on behalf of the Municipalities, states that the trucking of LNG is “separate and distinct” from this application. LL#58FN does not dispute the legal fact of this statement but submits that, for practical purposes, there is no Project without the trucking. It is unrealistic, therefore, to separate the trucking of the LNG from the Project. Furthermore, using fossil fuels to transport fossil fuels, 110 to 385 kilometres one way, seems an oddly archaic solution at a time when the reduction of carbon pollution is essential.
25. Notwithstanding LL#58FN’s long standing, deep relationship with the environment, the First Nation also values economic development, responsible industry and a prosperous future for its community. As such, LL#58FN does not oppose the Project despite environmental concerns but respectfully submits that a Leave to Construct approval should be premised on conditions requiring the Municipalities to provide regular updates to the First Nation on environmental monitoring and mitigation activities. LL#58FN expects to be provided with the Environmental Protection Plan in a timely fashion.

E. Conclusion

26. As previously stated, LL#58FN does not object to the Project as currently proposed. LL#58FN notes the contingent nature of the application and expects to be fully appraised of any material alterations going forward. LL#58FN recognizes the benefit of a potential future ability to access natural gas for its community as well as its commercial partners, however, LL#58FN respectfully submits that the Board should impose the following conditions on a Leave to Construct approval:
- a. Municipalities must perform ongoing meaningful consultation throughout the life of the Project;
 - b. Interested First Nations must have the ability to choose and approve the archaeologist used for any further archaeological assessments, including the Stage 2 work; and

- c. The Municipalities must provide ongoing environmental monitoring and mitigation activity updates to LL#58FN and provide the Environmental Protection Plan in a timely fashion.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 6TH DAY OF JANUARY
2020.**