

April 17, 2020

VIA EMAIL (BOARDSEC@OEB.CA)

Ms. Christine E. Long
Registrar and Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Dear Ms. Long:

**Re: RRIB and BNA Notice of Motion to Review and Vary Phase 1 Decision and Order in EB-2018-0329; Corporation of the Town of Marathon Submission on Threshold Issue
Ontario Energy Board File Number: EB-2020-0107**

We are writing on behalf of the Corporation of the Town of Marathon (the “**Corporation**”) in its own capacity and as the representative of the Township of Manitouwadge, Township of Schreiber, Township of Terrace Bay and the Municipality of Wawa (together with the Corporation, the “**Municipalities**”) and in connection with a Notice of Motion (“**Motion**”) filed on March 18, 2020 by Red Rock Indian Band (“**RRIB**”) and Bingwi Neyaashi Anishinaabek First Nation (“**BNA**”) for an order of the Ontario Energy Board (“**Board**” or “**OEB**”) varying its February 27, 2020 decision in proceeding EB-2018-0329 (the “**Phase 1 Decision**”). The Board has established proceeding EB-2020-0107 to hear and determine the Motion and issued Procedural Order #1 (“**PO1**”) inviting parties to file submissions on the threshold issue of whether the Board should proceed with a review.

For the reasons set out below, the Municipalities support the Motion and submit that the threshold for review has been met.

1. Consultation and cooperation with Indigenous communities

The Municipalities have carried out extensive consultation with Indigenous groups, communities, governmental bodies and other stakeholders, on the basis of a proposed distribution system that would be supplied by LNG. The Municipalities’ Indigenous consultation program did not present a CNG alternative because no such option was identified or available. If CNG became the primary source of supply to the Municipalities, consultation on a re-designed project would have to begin anew. This would, inevitably, lead to more delays in bringing less expensive and more reliable energy to Northern Ontario communities.

It is notable that an OEB-mandated assessment of CNG as a primary source of natural gas supply is likely to be an assessment of the Certarus supply option. The Municipalities are aware of no other CNG supply option in Northern Ontario. In this regard, the Municipalities note RRIB and BNA’s submissions in EB-2018-0329 with respect to Certarus’ alleged lack of consultation in constructing its CNG terminal in Red Rock. As governmental bodies, the Municipalities are committed to partnering with suppliers who have developed and maintained respectful relationships with all local communities and, importantly, with Indigenous communities. RRIB and BNA supported the Municipalities’ proposal to construct, own and operate a natural

gas distribution system supplied by LNG. Based on the information included in the Motion, it is not at all clear that these communities would similarly support a project supplied by Certarus CNG. In requiring the Municipalities to consider a CNG primary supply option (i.e., the Certarus option), the Board did not take into account the absence of support from important Indigenous stakeholders. This could represent a significant impediment to the development of the Municipalities' project (the "**Project**") which the Board failed to consider.

2. CNG was properly considered in the development of the Project

The Phase 1 Decision directed the Municipalities to provide a more detailed assessment of the CNG option that takes into consideration the use of CNG supply as the primary source of supply. This direction appears to be premised on the notion that the Municipalities imprudently or improperly excluded CNG from consideration as a competitive and available gas supply option. This is factually incorrect and, moreover, ignores the developmental history of the Project.

CNG as a primary source of supply was considered and ruled out at varying stages of development of the Project for the reasons explained in the Municipalities' application in EB-2018-0329, in their responses to interrogatories, and in their argument-in-chief and reply argument.¹

As part of the preliminary feasibility assessment of the Project in 2015, the Municipalities considered that there were no operating CNG facilities in northern Ontario that were proximate to the Municipalities, nor were there any proposals to develop such facilities. CNG was simply not an available option at the time.² The Municipalities revisited and, again, ruled out the CNG option later on in the development process. For example, they met with Certarus in 2017³ at which time Certarus advised that the Certarus business model did not contemplate supplying CNG to residential loads served by a pipeline.⁴ In other words, the Certarus business model did not support a primary objective and prerequisite of the Project, namely, the development of a regional natural gas pipeline system to serve the residential sector.⁵ Finally, and in addition, based on more recent communications with Certarus, it is not clear to the Municipalities that Certarus' new CNG facility near Nipigon, Ontario has sufficient capacity to serve the needs of the Municipalities.

Yours truly,
Dentons Canada LLP

Original signed by Dennis Wong

Dennis Wong

cc: Daryl Skworchinski, *Corporation of the Town of Marathon*
Stephanie Ash, *Firedog Communications*
Helen Newland

¹ EB-2018-0329, Foreword to Response to Certarus IRs ("**Certarus Foreword**"). See, also EB-2018-0329, Application, Exhibit A, Tab 13, Sched. 1, pages 12-14; EB-2018-0329, Applicants' Argument-in-Chief, paras. 85-89; EB-2018-0329, Applicants' Reply Argument, paras. 54-56; EB-2018-0329, Applicants' Response to OEB Staff IR-11(a)-(d) and attachments thereto, 38(a), and 45.

² Certarus Foreword, *ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

Parties to EB-2020-0107