

ONTARIO ENERGY BOARD

Reply Submissions of Red Rock Indian Band and Bingwi Neyaashi Anishinaabek First Nation on the Rule 43.01 threshold question of whether the matter raised on their Motion to Review and Vary the Phase 1 Decision and Order in EB-2018-0329 dated February 27, 2020 should be reviewed on the merits

May 15, 2020

1. These are the reply submissions of Red Rock Indian Band ("**RRIB**") and the Bingwi Neyaashi Anishinaabek First Nation ("**BNA**"), which respond to issues raised by Board Staff and Certarus Ltd. ("**Certarus**") in their opposition to the OEB proceeding to a full review on the merits of the Phase 1 Decision and Order in EB-2018-0329 (the "**Underlying Application**") as requested by RRIB and BNA (together, the "**Moving First Nations**").

Submissions of Board Staff

2. As Staff notes on page 6 of its submissions, review requests under Rule 40 are not limited to "orders". A "decision" can also be reviewed.
3. Certarus has not led evidence, but their intervention without evidence has resulted in the requirement that the Applicant, as part of Phase 2, "provide a more detailed assessment of the [compressed natural gas ("**CNG**")] option that takes into consideration use of CNG supply as the primary supply [emphasis added] to the Municipalities". This was contrary to the reasonable expectations of the Moving First Nations.
4. Board Staff addressed both the issue of consultation and the issue of delay. Regarding delay, Board Staff pointed out at page 9 that "one of the key purposes of the OEB's

review of the GSP is to consider whether the proposed option is in fact the best option.”

The Moving First Nations agree that the OEB needs to protect ratepayers and do not object to the Applicant being required to provide more information about LNG, but do not agree that late-blooming suggestions about CNG should be allowed to, in effect, restart the approvals process. The Moving First Nations overwhelming concern is that delay be entirely avoided or minimized, particularly when that delay is brought about by a corporate actor who has failed to consult with RRIB about building on RRIB’s traditional territory.

5. The Moving First Nations wish to emphasize that they see the Underlying Application as an important infrastructure and economic development initiative for the First Nations and proximate communities. The First Nations take no issue with the importance of the OEB’s role of protecting ratepayers, but respectfully ask that the OEB recognize the challenges that such complex applications place on smaller communities that have little or no experience in such applications and the affected groups, including in this case the Moving First Nations, whose wellbeing will be materially affected by the success or failure of such initiatives, which currently seem to have the support of the Province. The Moving First Nations see this as a rare opportunity and are very concerned about favourable circumstances changing while this Project is delayed.
6. Again, the Moving First Nations struggle to understand why Certarus has waited so long to raise issues about CNG when they have long been aware of the Underlying Application.
7. Regarding the issue of consultation, Board Staff references case law on the duty to

consult and raises the question of whether the Moving First Nations are arguing that the OEB has failed to meet any obligations it may have with respect to its duties to consult. That is not the Moving First Nations' complaint on this motion. The complaint is in respect of Certarus's failure to engage with RRIB then intervening at a late stage and, in the Moving First Nations' view, taking steps to delay the development of the Project.

Submissions of Certarus

8. In its submissions, Certarus wrongly disputes RRIB's claim that RRIB was not consulted prior to the erection of Certarus' CNG facility. Certarus chalks up what it suggests may be a misunderstanding to a change in leadership at RRIB. In response, RRIB staff reached out to former Chief Matthew Dupuis, providing him with the text of paragraphs 66-75 of Certarus' submission. Responding to Certarus' submission on the change in leadership at RRIB at paragraph 71, former Chief Dupuis advised:

Although there was a change in leadership within the Red Rock Indian Band, if there was any proper documented consultation it would have been passed down to the new Chief and Council. There were a handful of conversations that did take place from the initial meeting in 2018 to the construction, but none of those conversations were direct discussions related to consultation to a First Nation. Certarus from my understanding was never issued the order to consult with any First Nation in the area, they did reach out as a courtesy to the Red Rock Indian Band. The Red Rock Indian Band works in partnership with the surrounding municipalities (Nipigon, Red Rock, and Dorion) and did not want to hinder any chances of a new economic venture for the region. Although Certarus did seem to act in 'good faith', what they did not do is have proper comprehensive consultation discussions with the Chief and Council nor the membership of the Red Rock Indian Band.

9. RRIB is aware that Certarus had a contract with LTL Construction in respect of some site work at the Certarus facility, and RRIB and LTL Construction do work together through a limited partnership, but the work done at the Certarus facility did not involve that

limited partnership. RRIB does not seek to block opportunities for its partners, even if those opportunities are with companies that fail to consult with RRIB.

10. RRIB remains committed to working in partnership with neighbouring communities to develop appropriate economic opportunities for our communities. The Moving First Nations remain concerned that Certarus is a force for delay in this proceeding and respectfully request that the OEB be vigilant about avoiding delay that serves the interests of Certarus, but not the Moving First Nations and their neighbouring communities.



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