



Ontario  
Energy  
Board | Commission  
de l'énergie  
de l'Ontario

---

# **DECISION AND ORDER ON COST AWARDS**

**EB-2020-0107**

## **RED ROCK INDIAN BAND AND BINGWI NEYAASHI ANISHINAABEK FIRST NATION**

**Motion to Review and Vary Phase 1 Decision and Order in EB-2018-0329  
dated February 27, 2020**

**BEFORE:**        **Michael Janigan**  
Presiding Member

**Lynne Anderson**  
Member

**Emad Elsayed**  
Member

---

**July 10, 2020**

## INTRODUCTION AND SUMMARY

This is a decision of the Ontario Energy Board (OEB) on cost claims filed with respect to Red Rock Indian Band (RRIB) and Bingwi Neyaashi Anishinaabek First Nation's (BNA) Motion to Review and Vary (Motion) the OEB's Phase 1 decision and order in EB-2018-0329 dated February 27, 2020<sup>1</sup> (Phase 1 Decision). The OEB finds that Anwaatin Inc. (Anwaatin) is eligible for 100% of its reasonably incurred costs of participating in this proceeding, that the claim by Anwaatin is reasonable, and that it shall be reimbursed by the Corporation of the Town of Marathon (Town of Marathon).

On August 2, 2019, the Town of Marathon, on its own behalf and as a representative of the Township of Manitouwadge, Township of Schreiber, Township of Terrace Bay and the Municipality of Wawa (collectively the Municipalities), applied to the OEB for leave to construct (LTC) the necessary natural gas pipelines systems (Project), certificates of public convenience and necessity, approval of municipal franchise agreements, approval of land use agreements, approval of a Gas Supply Plan (GSP), and pre-approval of the cost consequences of a long-term liquefied natural gas (LNG) supply contract (collectively, the North Shore Application). The OEB assigned the North Shore Application case number EB-2018-0329 (North Shore Proceeding).

The OEB issued the Phase 1 Decision in the North Shore Proceeding on February 27, 2020. The OEB approved the application for municipal franchise agreements and the forms of land use agreements, but did not approve any of the other requested items: the LTC, the GSP, and the request for pre-approval of the cost consequences of the long-term LNG supply contract. A decision on the outstanding requested approvals will be made as part of Phase 2.

With respect to the GSP, the Phase 1 Decision expressed concern that, "[t]he proposed Gas Supply Plan has failed to demonstrate that a comprehensive and current assessment of alternatives including CNG was performed." Furthermore, the OEB required that, "[a]s part of Phase 2, the Applicant must provide a more detailed assessment of the CNG option that takes into consideration use of CNG supply as the primary supply to the Municipalities." The OEB did not specify what source or sources of CNG needed to be considered in the assessment.

On March 18, 2020, RRIB and BNA filed the Motion under Rule 40 of the OEB's *Rules of Practice and Procedure*. The Motion sought to have the Phase 1 Decision varied to remove the requirement that the Town of Marathon provide a more detailed assessment

---

<sup>1</sup> EB-2018-0329, application by the Town of Marathon for approvals necessary to construct facilities and distribute natural gas in five communities located along the North Shore of Lake Superior.

of the CNG option that takes into consideration use of CNG supply as the primary supply to the Municipalities as part of Phase 2.

The OEB issued its decision on the Motion on June 4, 2020. The OEB found that the Motion did not meet the threshold test and dismissed the Motion without proceeding to a review of the merits. The OEB found that Anwaatin was the only cost eligible intervenor, and that the Town of Marathon is responsible for the payment of approved cost claims.

On June 15, 2020, the OEB received a cost claim from Anwaatin. On July 2, 2020, the Town of Marathon filed a letter seeking to understand the OEB's rationale for holding the Municipalities responsible for costs in the proceeding. The Town of Marathon asserted that neither the OEB's *Rules of Practice and Procedure* nor the OEB's *Practice Direction on Cost Awards* provides any guidance as to whether an applicant in one proceeding should be held responsible for costs in another, albeit related, proceeding established to hear a motion to review the OEB's decision in the first proceeding by an intervenor in the first proceeding. The Town of Marathon stated that, should the OEB decide to award costs, the Municipalities would be prepared to pay Anwaatin's cost claim.

## Findings

Section 2.01 of the *Practice Direction on Cost Awards* allows the OEB to order "by whom and to whom any costs are to be paid".

The Motion dealt with the terms of an OEB decision providing ongoing directions associated with an LTC application by the Town of Marathon. Applicants are generally accountable for costs related to their applications, and the OEB finds that the Town of Marathon is responsible for the payment of Anwaatin's approved costs.

The OEB has reviewed the claim filed to ensure that it is compliant with the OEB's *Practice Direction on Cost Awards*.

The OEB finds that Anwaatin is eligible for 100% of its reasonably incurred costs of participating in this proceeding. The OEB finds that the claim of Anwaatin is reasonable and shall be reimbursed by the Town of Marathon.

**THE ONTARIO ENERGY BOARD ORDERS THAT:**

1. Pursuant to section 30 of the *OEB Act*, the Town of Marathon shall immediately pay Anwaatin \$2,317.63.

**DATED** at Toronto July 10, 2020

**ONTARIO ENERGY BOARD**

*Original signed by*

Christine E. Long  
Registrar and Board Secretary