



DECISION AND ORDER

EB-2018-0329

CORPORATION OF THE TOWN OF MARATHON

Application for approval to construct a natural gas pipeline and associated facilities in the Town of Marathon, the Township of Manitouwadge, the Township of Schreiber, the Township of Terrace Bay and the Municipality of Wawa

BEFORE: **Susan Frank**
Presiding Member

Cathy Spoel
Member

Emad Elsayed
Member

February 27, 2020

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1 INTRODUCTION AND SUMMARY

The Corporation of the Town of Marathon (Town of Marathon or Applicant), Township of Manitouwadge, Township of Schreiber, Township of Terrace Bay and the Municipality of Wawa (the Municipalities) have resolved to form a new natural gas distribution company (Utility) to distribute natural gas in their respective municipalities.

The Municipalities are located along the North Shore of Lake Superior, between Nipigon and Sault Ste. Marie. The combined population of the Municipalities is approximately 11,000. At present, there is no natural gas distribution within the Municipalities and propane, fuel oil, wood and electricity are relied on for energy needs.

On August 2, 2019, the Applicant filed an application seeking a number of approvals (outlined below) necessary to construct facilities and distribute natural gas in the Municipalities (the Application). The Municipalities are not adjacent to one another, and each would have separate pipeline systems that would not be physically connected to each other, or to any natural gas transmission pipeline.

The pipeline systems in the Municipalities would distribute re-gasified liquefied natural gas (LNG), which would be trucked to the Municipalities from a LNG production facility (LNG Facility) and stored locally in LNG Depots. The upstream elements, including the construction and operation of the LNG Facility, the trucking of LNG and the construction of LNG Depots, are not part of the Application. These upstream elements would be performed by Nipigon LNG Limited Partnership (NLNG). The natural gas supply arrangements between the Utility and NLNG would be governed by a long-term LNG supply contract that is within the scope of this Application.

The Marathon Economic Development Corporation (MEDC) is a wholly-owned subsidiary of the Town of Marathon, and is the legal entity that is developing the Project, as an agent on behalf of each of the Municipalities. For the purposes of the Application, the Applicant is acting as an agent of MEDC.

The Applicant has filed this Application seeking the following:

1. Conditional approval under section 90 of the *Ontario Energy Board Act, 1998* (OEB Act), for **leave to construct** (LTC) approximately 116.5 km of NPS 2, 4 and 6 plastic pipeline and ancillary facilities to serve the Town of Marathon, Township of Manitouwadge, Township of Schreiber, Township of Terrace Bay and Municipality of Wawa, subject to the OEB's approval of the Utility's financial and technical fitness to serve (the LTC component of the Application is referred to in this decision as the Project)

2. Approval under section 97 of the OEB Act of the form of **land use agreements** to be offered to affected landowners
3. An order under section 8 of the *Municipal Franchises Act, 1990* (Franchises Act), granting a **certificate of public convenience and necessity** (certificate) to the Corporation for each of the Municipalities
4. An order under section 9 of the Franchises Act for approval of the **municipal franchise agreements** (MFAs) between the MEDC and each of the Municipalities
5. An order or orders approving a **gas supply plan** (GSP) to serve the Municipalities
6. An order under section 36 of the OEB Act for pre-approval of the **cost consequences of a long-term LNG service contract** (Contract) with NLNG

The Applicant proposed that the OEB's approval be granted through a two-phased approach. As the Utility has not yet been fully organized, Phase 1 of the Application does not include information on the Utility's financial capacity and technical ability. The Municipalities have obtained conditional commitments for the resources required to finance, operate and maintain the Utility, however, the providers of the resources cannot commit these resources unconditionally until the Application is approved by the OEB. The Applicant requested that the OEB issue LTC approval by December 2019, subject to a condition that requires the Utility to file information for OEB review and approval regarding the Utility's technical and financial capacity in Phase 2 of the application, which would occur at a later date. The Applicant requested approval of Phase 2 by the end of March 2020.

Construction of the Project is planned to start in April 2020 in order to begin providing service by the 2020-2021 heating season. Construction of the Project would continue until its completion in July 2022.

The Utility would file its inaugural rate application at a later date.

The total cost of the Project is expected to be \$43.95 million. Accounting for a \$3.45 million grant from the Northern Ontario Heritage Fund Corporation, the capital costs that the Utility would ultimately expect to recover from ratepayers would be \$40.5 million.

Maps showing the proposed pipeline routing in each municipality are provided in Schedules A1-A5 of this Decision and Order.

Summary of Findings

The OEB finds that some requirements for LTC have been met; in particular the need, proposed facilities, environment matters, and land matters. However, the OEB has concerns regarding the economic feasibility of the Project in its current form and the indigenous consultation. Additional information or changes to the current proposal are required before the OEB approves the application for LTC.

The OEB approves the form of land use agreements to be offered to affected landowners.

For new entrants, a determination on financial capacity and technical capability is made as part of the certificate application. As information on the Utility's financial capacity and technical capabilities will be filed as part of Phase 2, the OEB will make a determination on the certificate requests at that time.

The OEB approves the proposed MFAs between the MEDC and each of the Municipalities, and will require the Applicant to file copies of these agreements as a condition of this approval. The MFAs are in the form of the OEB's model franchise agreement.

The cost consequences of the GSP and Contract are not approved as filed. As described in greater detail below, the OEB has concerns with these proposals and cannot approve them without receiving additional information or changes to the proposals. The OEB will review any additional information or changes in Phase 2.

2 THE PROCESS

On December 4, 2018, the Applicant filed with the OEB a notice of intent to file its application by June 28, 2019. The OEB issued a letter on December 20, 2018, requesting that any other party currently developing a plan to provide service to the Municipalities notify the OEB. On January 16, 2019, Enbridge Gas Inc. (Enbridge Gas) filed a letter registering its interest to serve the Municipalities. On February 4, 2019, Enbridge Gas withdrew its interest. The Applicant filed its initial application on August 2, 2019. The Applicant filed an updated application (Application) on August 15, 2019.

The OEB issued a Notice of Hearing on September 12, 2019. Procedural Order No. 1, issued on October 1, 2019, granted intervenor status to Jackfish Metis Association (JMA) and Red Rock Indian Band (RRIB). On October 30, 2019, Procedural Order No. 2 granted intervenor status to Anwaatin Inc. (Anwaatin), Bingwi Neyaashi Anishinaabek First Nation (BNA First Nation), Certarus Ltd. (Certarus), the School Energy Coalition (SEC), and the Vulnerable Energy Consumers Coalition (VECC). The same Procedural Order also provided for interrogatories and submissions on the Application. OEB staff, Anwaatin, Certarus, SEC and VECC filed written interrogatories by November 12, 2019. On November 25, 2019, Long Lake #58 First Nation (LL#58FN) was granted intervenor status. The Applicant filed interrogatory responses on November 26, 2019, and its argument-in-chief on December 10, 2019. Submissions from OEB staff, Anwaatin, Certarus, LL#58FN, SEC and VECC were filed on January 6, 2020. The Applicant filed its reply submission on January 23, 2020.

3 LEAVE TO CONSTRUCT

Section 96 of the OEB Act states that the OEB shall make an order approving leave to construct if it is of the opinion that the project is in the public interest. “Public interest” is not defined by the OEB Act; however the OEB is guided by its statutory objectives in relation to gas, which are:

1. To facilitate competition in the sale of gas to users.
2. To protect the interests of consumers with respect to prices and the reliability and quality of gas service.
3. To facilitate rational expansion of transmission and distribution systems.
4. To facilitate rational development and safe operation of gas storage.
5. To promote energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the consumer’s economic circumstances.
 - 5.1. To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas.
6. To promote communication within the gas industry and the education of consumers.

In assessing whether a natural gas project is in the public interest, the OEB typically considers matters such as the need for the project (including how the need was identified), the proposed facilities and alternatives (including the route), the costs and economics of the project, environmental impacts, land use requirements and the form of any proposed landowner agreements, and the adequacy of indigenous consultation.

The OEB finds that several requirements for LTC approval have been satisfied by the Application, submissions and responses to interrogatories¹. The following sections provide a review of each of these requirements and the corresponding OEB findings. However, the Project economics is an area of concern, and additional information or changes to the current proposal are required before any final approval can be granted. The outstanding issues will be addressed by the OEB in Phase 2.

¹ Unless there are significant changes to the information and evidence filed in relation to need, proposed facilities, environment matters, or land matters, the OEB finds that these requirements have been met. If there are any significant changes in these areas, they may need to be reassessed in Phase 2.

3.1 Need for the Project

The Municipalities are located along the North Shore of Lake Superior, between Nipigon and Sault Ste. Marie. The combined population of the Municipalities is approximately 11,000. At present, there is no natural gas service within the Municipalities and propane, fuel oil, wood and electricity are relied on for energy needs.

The Applicant submits that access to natural gas may benefit customers in the form of lower energy costs, and that the “knock on” effects may include revitalized local economies, a contribution to Ontario’s gross domestic product and a reduction in greenhouse gases. The Applicant submits that the Project has the potential to build economic capacity in Northern Ontario and promote, attract and support growth in the existing and emerging priority economic sectors identified in the Growth Plan for Northern Ontario.

The Municipalities retained Elenchus Research Associates (Elenchus) to develop 25-year natural gas market demand forecasts for the Municipalities, by customer type. Elenchus worked with Innovative Research Group Inc. (Innovative), a national public opinion research firm, to design and execute a telephone survey in the Municipalities to determine the level of interest in converting to natural gas in the residential, commercial and institutional sectors. Key findings of the survey include:

- 49% of residential respondents said they would definitely or likely convert their heating system to natural gas with an additional 25% saying it would depend²
- 51% of residential respondents said they are likely to convert their water heaters with an additional 25% saying it would depend
- 60% of commercial respondents said they were willing to consider switching to natural gas
- 96% of institutional respondents said they were willing to consider switching to natural gas

Based on its market assessment, the Applicant forecast the total ten-year customer attachments to be 3,460 out of a total of 5,540 potential customers, or 62.5%. Of the 3,460 forecast attachments, 3,111 or 89.9% are residential.

² Respondents said it would depend on such factors as cost, their current financial situation, how much longer their existing appliances may last, and them learning more about natural gas.

The Application includes letters of support from the Thunder Bay Chamber of Commerce, Thunder Bay Community Economic Development Corporation, RRIB, Biigtigong Nishnaabeg First Nation, and BNA First Nation.

Findings

The OEB finds that there is a need for the Project.

The Municipalities' constituents rely on propane, fuel oil, wood and electricity, all of which are more expensive sources of energy compared with natural gas. Providing access to natural gas is consistent with some of the government of Ontario's energy and economic development policies, including the Growth Plan for Northern Ontario³, A Plan to Build Ontario Together⁴, and natural gas expansion through the Access to Natural Gas Act⁵. The Project is a community-led and community-endorsed initiative.

Telephone surveys were conducted of residential, commercial and industrial customers to determine the interest in switching to natural gas. These surveys demonstrate that there is significant interest in gaining access to natural gas.

Although the OEB accepts that there is a demand for natural gas service in the Municipalities, it also understands that this demand is contingent on natural gas actually being a less expensive alternative to existing fuel sources. This issue is addressed under Project Costs and Economics below.

3.2 Proposed Facilities and Alternatives

The proposed distribution systems within each community would consist of 15 to 35 km of nominal pipe size (NPS) 2 to 6-inch medium density polyethylene pipelines. The total combined length of all distribution pipelines will be about 116.5 km (not including individual customer service lines).

The Applicant retained Stantec Consulting Ltd. (Stantec) to assist in evaluating alternative routing from an environmental and socio-economic impact perspective. The preferred routing was selected based on maximizing consumer connections while minimizing environmental and socio-economic impacts.

³ <https://www.ontario.ca/document/growth-plan-northern-ontario>

⁴ <https://budget.ontario.ca/2019/fallstatement/pdf/2019-fallstatement.pdf>

⁵ <https://www.ontario.ca/laws/statute/s18015>

Findings

The Applicant used Stantec to determine the preferred alternative. Stantec excluded the alternative segments as they did not allow lateral pipelines to reach as many residences and businesses as the preferred preliminary route. No parties objected to the proposed facilities, alternatives or routing. The OEB accepts the proposed facilities and routes.

3.3 Environmental Matters

The Applicant retained Stantec to undertake an assessment of pipeline routing and LNG Depot locations in the Municipalities in terms of environmental and socio-economic impacts, including potential impacts on Indigenous communities (which is discussed in the section on Indigenous Consultation below). Mitigation measures designed to minimize environmental and socio-economic impacts were developed as part of the assessments. The assessment results were documented in five Environmental Reports (ERs). The ERs conform to the OEB's *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (7th edition, 2016). In Stantec's opinion, the implementation of the recommended mitigation and protective measures outlined within the ERs will adequately protect the sensitive environmental features identified throughout the construction process.

The Applicant submitted the ERs to the Ontario Pipeline Coordinating Committee (OPCC) on August 2, 2019. OEB staff noted that the Environmental Protection Plan (EPP), which is intended to compile all the recommendations for mitigation and monitoring, including that of the OPCC, was not filed as part of the Application. The Applicant stated that the Utility will develop an EPP and that it will be completed prior to tendering the package to construction contractors, and circulated to the OPCC once developed.

OEB staff submitted that OEB approval should be conditional on filing the final version of the EPP. To the extent any concerns are identified by OPCC members or parties related to the EPP, the EPP may have to be reviewed further by the OEB as part of Phase 2 of the application.

Findings

The OEB is satisfied that the environmental impacts of the Project have been adequately mitigated. The proposed route of the Project is supported by the Stantec ERs, and represents the least potential for adverse environmental and socio-economic impacts. The proposed route minimizes route length, avoids sensitive environmental and socio-economic features wherever practicable and utilizes existing linear routes for other infrastructure such as electricity and water. The use of public information sessions

to inform the public about potential impacts, proposed mitigation measures and how to participate is also consistent with OEB expectations.

The ERs produced by Stantec were comprehensive including the consideration of the impacts of the Project's construction, operation and maintenance activities on the physical, bio-physical, and socio-economic environment. The OEB notes that the OPCC provided comments on the Project in October 2019. The OEB makes the filing of the EPP a condition for the final approval of the LTC.

The OEB also accepts OEB staff's proposed draft Conditions of Approval requiring the applicant to implement all the recommendations of the ER and all the recommendations and directives identified in the OPCC review of the EPP.

3.4 Land Matters

The proposed distribution pipelines will be located within road allowances. However, the Applicant says that temporary working areas may be required along the route where the road allowance is too narrow or confined to facilitate construction, and agreements for temporary working rights will be negotiated where required.

Pursuant to section 97 of the OEB Act, an applicant must satisfy the OEB that it has offered or will offer to each affected land owner a land use agreement in a form approved by the OEB.

Although the Applicant does not anticipate the need for any permanent easements, it filed its Standard Easement Agreement⁶ for review by the OEB. The Applicant also filed its Standard Working Area Agreement⁷. OEB staff compared these forms of agreement to similar agreements filed by other gas distribution utilities in Ontario. OEB staff submitted that the Applicant's Standard Working Area Agreement was not acceptable as-is, and should only be approved by the OEB if the Applicant revised it to include the following:

- a) An offer by the Applicant to cover the cost of independent legal advice for the landowner
- b) Written confirmation that the Applicant and its constructor have appropriate insurance coverage
- c) Written contemplation of agreement termination
- d) Written description of the Applicant's alternative dispute resolution process

⁶ For use in obtaining a permanent easement rights on private or public lands.

⁷ For use in obtaining temporary working area rights on private or public lands.

- e) Notice that equipment, spoils, parts & materials may be stored on the property
- f) Environmental protection obligations on the part of the Applicant

On January 24, 2020, the Applicant filed with the OEB a revised Standard Working Area Agreement that it stated addresses OEB staff comments and conforms to other similar agreements that have been approved by the OEB in prior proceedings.

In response to an interrogatory, the Applicant volunteered to make a post-construction filing with the OEB that provides evidence of landowner satisfaction with post-construction clean-up when complete. OEB staff submitted that this information could be made available as part of the post-construction report that is required as a standard condition of LTC approval.

OEB staff noted in its submission that the Municipalities have resolved to acquire (if necessary) the land required for the LNG Depots and then sell or lease this land to the Utility. While these arrangements have not yet been concluded, OEB staff submitted that it is satisfied that that all land required for LNG Depots will be available for use when required.

Findings

In its reply argument, the Applicant filed a revised Work Area Access Agreement addressing the concerns raised by OEB staff. Given this information and the fact that the proposed pipelines will primarily be located within road allowances and that arrangements are being made to secure sites for the LNG Depots on municipally owned land, the OEB approves the forms of land use agreements and the Applicant's treatment of land matters.

3.5 Indigenous Consultation

On March 18, 2019, the Applicant contacted the Ministry of Energy, Northern Development and Mines (MENDM) with respect to the Crown's duty to consult. On May 21, 2019, the MENDM issued a letter indicating that the procedural aspects of the Duty to Consult are delegated to the Applicant⁸. The letter from MENDM identified 13 First Nation and Métis communities that were to be consulted as they may have Aboriginal or treaty rights that may be impacted by the Project.

The Applicant stated that it sent letters to the First Nation and Métis communities requesting information on impacts that the Project may have on constitutionally

⁸ Application, Exhibit A, Tab 10, Schedule 1, Attachment 1, Appendix B - Correspondence

protected Aboriginal or treaty rights and measures for mitigating those impacts. The Applicant filed evidence regarding the nature and extent of the communication between itself and the First Nation and Métis communities.

A number of Indigenous groups have intervened in this proceeding, however to date no specific concerns regarding the proposed Project have been stated on the record. Some general concerns have been raised including energy poverty among First Nations and the safety of transporting LNG by truck. OEB staff submitted that these issues, while important, are not relevant to this Application to construct distribution pipelines within the Municipalities.

In their submissions, Anwaatin and RRIB each stated that they are generally supportive of the Project. In its submission, LL#58FN stated that it did not object to the Project.

In its submission, LL#58FN acknowledged that it had been contacted by the Applicant, but questioned whether the communication was “extensive”, as described by the Applicant. LL#58FN recommended that the OEB require the Applicant to continue meaningful consultation throughout the life of the Project. LL#58FN also recommended that it be kept up-to-date on environmental and mitigation activities. LL#58FN further recommended that interested First Nations should have the ability to choose and approve the archeologist used by the Applicant for any further assessments, including stage 2 archeological work.

In its submission, OEB staff noted that the Applicant has not yet filed an opinion letter from the MENDM regarding the adequacy of Indigenous consultations to date. As of November 21, 2019, three First Nations were still listed as “pending” under the MENDM’s review. OEB staff stated that it is not aware of any duty to consult related concerns regarding the Project itself. However, OEB staff submitted that if the OEB grants the Applicant leave to construct, such approval should be conditional on receiving the letter from MENDM.

On February 25, 2020 (after all final arguments had been received), the OEB received a letter of comment from Wahkohtowin Development GP Inc. (Wahkohtowin). The letter suggests that three potentially impacted Indigenous communities – Chapleau Cree First Nation, Missanabie Cree First Nation, and Brunswick House First Nation – had not been consulted with respect to the Project. Wahkohtowin is owned by the three First Nations.

Findings

The OEB finds that Marathon followed the OEB’s Environmental Guidelines with respect to Indigenous consultation. A summary of meetings, concerns identified, and the Applicant’s responses has been included in the pre-filed evidence. The OEB is not

aware of any specific Aboriginal or treaty rights that could be adversely affected by the Project. Since the Project is being built within existing road allowances the potential for harm to Indigenous communities and their Aboriginal or treaty rights appears to be limited.

LL#58FN did not object to the Project but did propose some conditions of approval be imposed. The OEB does not agree that the interested First Nations should have the unilateral ability to choose and approve the archeologist used for any further assessments including stage 2 work, though it encourages the Applicant to work closely with the First Nations in selecting an appropriate archaeologist. However, the ongoing consultation and ongoing environmental monitoring requested by LL#58FN are conditions that the OEB expects the Applicant to meet.

As the leave to construct application is not being approved as part of this decision, the OEB is not making any final findings with respect to the adequacy of consultation. The OEB is also still waiting for the Applicant to receive and file a letter of opinion from MENDM. The OEB further takes note of the letter of comment filed by Wahkohtowin Development. To the extent that Wahkohtowin (or the First Nations that it represents) wishes to make submissions with respect to the duty to consult issue, it may do so through Phase 2 of the proceeding.

3.6 Project Costs and Economics

Capital Costs

The total capital cost of the Project is estimated to be \$43.95 million. This amount includes a budgeted contingency of \$10.50 million which represents approximately 24% of the total capital cost.

VECC submitted that there was little evidence to support the accuracy of the estimated capital costs, and that if actual costs are higher than budget there could be a negative impact on customer attachments. VECC also noted that the Applicant did not include evidence on projected operating costs.

OEB staff submitted that the estimated capital costs of the Project are comparable to other recent expansion projects, although it noted that the unit costs of the Project are generally lower than comparable community expansion projects and that the cost contingency is significantly higher.

In response to an interrogatory, the Applicant explained that a consultant had developed the capital cost estimate including the level of contingency. With respect to the contingency, the Applicant believes that it was a reasonable indication of the

degree of capital cost uncertainty at the time of filing. In its reply submission, the Applicant stated that typical construction budgets for infrastructure projects include a contingency between 20 and 25 percent.

The Applicant stated that, following OEB approval, it will advance the Project and refine the capital cost estimate (and reduce the contingency), through more detailed technical analysis including the following work:

- Detailed design of the gas distribution system in each Municipality
- Field survey in each Municipality
- Geotechnical investigation in each Municipality, including exploring the amount of rock trenching required for the gas distribution system
- Competitive construction cost bids from contractors

OEB staff noted that if the Project is approved, capital cost overruns would be subject to a prudence review in the Utility's inaugural rate application or the application in which it seeks to include the costs in rate base.

Market Potential

OEB staff submitted that the methodology used by the Applicant to assess market potential and the resulting attachment forecast is consistent with recent community expansion projects in Ontario. Despite this, VECC and OEB staff expressed concerns that the customer attachment forecast may be optimistic, and that if the forecast does not come to fruition, that could trigger rate increases for customers who did convert.

The Applicant submitted that the fact that the forecasts in the Application will be updated in the Utility's inaugural rate application to reflect information from later stage engineering and geotechnical activities and pipeline constructor bids (discussed below), does not mean that these forecasts cannot be relied upon to determine economic feasibility for the purpose of issuing a leave to construct order. The Applicant stated that the rate estimates included in the Application are significantly lower than alternative sources of energy in the Municipalities. Accordingly, there is considerable latitude with respect to forecast variance, before arriving at the point where these cost savings would be completely eroded.

In its submission, SEC recommended that communications to customers and potential customers with respect to attaching to the Utility's system must be approved by the OEB, and must fairly and thoroughly explain the costs, risks, and benefits associated with customers switching from their current energy source(s) to the Utility's natural gas offering.

Mill Risk Mitigation Proposal

SEC, VECC and OEB staff submitted that the Project economics rely heavily on the demand response program of a single industrial customer, the pulp mill in Terrace Bay (the Mill), and that the OEB should not grant LTC approval until this risk has been adequately mitigated.

The Applicant estimates that the total annual consumption of the Mill will be approximately 67% of the total demand for all customers. SEC, VECC and OEB staff expressed concern that there is a risk of significant rate increases if the Mill, for whatever reason, significantly reduced or stopped its consumption of natural gas. OEB staff submitted that if the Mill were to stop taking gas during the initial ten year term of the Project, then (absent a rate stability period, discussed below) the average annual residential bill would increase by about \$2,093 from about \$1,693 to about \$3,786. This would more than eliminate any savings associated with converting to natural gas, which is estimated to be about \$1,500 per year in many cases. SEC, VECC and OEB staff agreed that without the Mill, the Project does not appear to be economic.

OEB staff noted that, as far as it is aware, to date there is no formal agreement between the Applicant and the Mill confirming that the Mill will actually be a customer of the Utility.

SEC and OEB staff also submitted that the OEB should not approve the Applicant's GSP or the cost consequences of the Contract without ensuring that the Mill risk was properly managed. This could mean requiring the Applicant to develop a risk mitigation plan or requiring the Applicant to obtain some sort of financial backstop from the Mill. VECC submitted that any leave to construct issued by the OEB should be conditional on the conclusion of a contract between the Utility and the Mill.

In response to the submissions of parties, the Applicant agreed to file as part of Phase 2 for OEB approval a Mill Risk Mitigation Proposal that may include one or more of the following:

- a) an executed contract with the Mill and/or one or more other large industrial customers
- b) a binding commitment from one or more large industrial customers to provide a financial backstop to their obligations under the contract
- c) the details of a financing plan that addresses / mitigates the Mill-related risk
- d) a description of other mitigative measures that the Utility will implement

Rate Stability Period

Several parties noted that the Application did not include a proposal for a rate stability plan (RSP) as contemplated in the OEB's decision in the Generic Proceeding on Community Expansion (Generic Decision)⁹.

A rate stability period is a period of time (generally ten years) during which the proponent is held to its cost estimates for its project. This creates a level of cost certainty for consumers upon which to base their decision on whether or not to convert to natural gas. During a rate stability period, the project proponent bears the risk to its revenue requirement associated with variances in customer attachments and capital cost overages.

In its reply argument, the Applicant committed to filing a rate stability period proposal as part of its inaugural rate case. The Applicant also stated that it will not be in a position to commit to a specific rate stability framework, including details with respect to permissible adjustments, term, etc., at the time it files its Phase 2 evidence. Although the Applicant states it has confidence in the cost estimates in the Application, these estimates are not yet at the stage to serve as a basis for setting a revenue requirement and committing to specific rate stability provisions.

Findings

The OEB's objectives in relation to gas include "to facilitate rational expansion of transmission and distribution systems", and "to facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas". The OEB believes that it would not be in the public interest to approve a project where there are concerns regarding the economic viability of the proposed distribution system. Based on the record that is currently before it, the OEB is concerned about the economic viability of the Project. Of particular concern is the reliance on a single customer for such a large proportion of the load and revenues of the Project, and the lack of any security to ensure that these revenues are realized. This imposes significant risk on not just the Applicant, but also its other customers, who would be expected to make up most of the revenues associated with the Mill in the event that it stopped or greatly curtailed its gas usage.

The Project economics is the primary area of the LTC requirements that the Applicant (to date) has not met. As noted in the section under capital costs above, in its reply argument, the Applicant recognized that the current submissions are insufficient in this

⁹ OEB's Decision and Order in the Generic Proceeding on Community Expansion, EB-2016-00004, issued November 17, 2016, pages 20-21

area and indicated that it would file a Mill Risk Mitigation Proposal in Phase 2. The OEB will not give final approval to this application until it has received and reviewed the following information.

- a) A plan to mitigate the current reliance on a single industrial customer to meet the Contract conditions with NLNG. The Mill Risk Mitigation Proposal must include a letter of credit or similar financial security from the Mill, a change to the contract with NLNG to lower the fixed payments in the case of a reduction in the gas demanded, and / or another source of revenue equivalent to the amount currently forecast from the Mill.
- b) A RSP proposal to prevent the risks associated with the customer attachment forecasts and cost overruns from being exclusively on the account of the customers. A typical RSP approach in utility expansions is to offer a 10-year rate stabilization period. The rate stabilization period should allow the majority of converting customers to recover their conversion investment. All OEB approved community expansion projects since the Generic Proceeding have had a RSP.

4 CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY & MUNICIPAL FRANCHISE AGREEMENTS

4.1 Certificates

The Applicant is requesting five certificates: one for each of the five Municipalities. As part of an interrogatory response, the Applicant provided draft certificates to be issued to the Applicant as the agent of MEDC. The Applicant also filed maps to illustrate the boundaries of the certificates being requested.

OEB staff submitted that it had no issue with the OEB granting the certificates to the Applicant, but that the maps were not sufficient and needed to be scaled such that the municipality in question fills the page, have geographic features (e.g. major streets, lakes, railway lines) identified with legible font, and have a north arrow. The Applicant filed updated maps to address OEB staff's comments as part of its reply submission.

OEB staff noted that, after the Utility is formed, the certificates will need to be transferred to the Utility, through an application filed jointly by the Applicant and the Utility under section 18 of the OEB Act. OEB staff noted that this application could be filed concurrently with Phase 2 of this proceeding.

Findings

For new entrants, a determination on financial and technical capabilities is made as part of the certificate of public convenience and necessity. The Applicant has not yet filed all of the relevant information on the Utility's financial and technical capabilities, and has indicated that it will do so as part of Phase 2 of this proceeding. As a result, the OEB cannot approve the certificate of public convenience and necessity at this time, and will consider the matter again during Phase 2.

4.2 Municipal Franchise Agreements

OEB staff submitted that it has no issue with the OEB granting the Applicant's request to approve the proposed MFAs between the Municipalities and the MEDC.

The MFA between the Town of Marathon and MEDC filed by the Applicant is in the form of the 2000 Model Franchise Agreement without any modifications, and the Applicant states that the franchise agreements between the other Municipalities and MEDC are identical. The Applicant also filed the by-laws passed by each of the Municipalities indicating their agreement with the terms of, and their intention to enter into, the MFAs.

The Applicant stated that the five MFAs will be signed and executed after OEB approval is obtained, and that the MFAs will be transferred to the Utility once it is formed. OEB staff noted that this transfer must occur through an application filed jointly by the Applicant (as the agent of MEDC) and the Utility under section 18 of the OEB Act. OEB staff noted that this application could be filed concurrently with Phase 2 of this proceeding.

Findings

The OEB approves the as filed the Municipal Franchise Agreement between the Town of Marathon and the MEDC. It also approves the proposed Municipal Franchise Agreements with the other Municipalities, though it will require the Applicant to file copies of these agreements as a condition of this approval.

5 GAS SUPPLY PLAN

The Applicant has requested approval of its GSP. OEB staff noted that the OEB does not approve GSPs, but rather will approve the cost consequences of the GSP. The Utility is expected to comply with the OEB's *Framework for the Assessment of Distributor Gas Supply Plans*, which requires that the Utility file its full GSP every five years and provide annual updates once the Utility is operational.

In its GSP, the Applicant assessed commodity, transportation, and other transactional services upstream of the LNG Facility. It also assessed two alternatives to gas supply from the LNG Facility: compressed natural gas (CNG) service and a lateral pipeline. The applicant determined LNG to be the preferred source of gas supply. In addition to LNG sourced from NLNG, the Applicant also assessed alternate sources of LNG supply from Ontario, Quebec, and Minnesota.

SEC and OEB staff submitted that the GSP adequately addresses the guiding principles of cost effectiveness and reliability with respect to the commodity, transportation, and other transactional services upstream of the LNG Facility. SEC and OEB staff submitted that the Applicant has made its case that LNG is the most beneficial and cost-effective option. However, OEB staff expressed concern that:

- a) The Utility intends to rely 100% on LNG supplied by NLNG
- b) CNG was not sufficiently assessed as a secondary alternative to LNG supply for peak shaving and emergency back-up supply

VECC submitted that the OEB should require the Applicant to produce a specific and rigorous emergency gas supply plan.

In response to interrogatories, the Applicant indicated that provision for secondary gas supplies using LNG or CNG can be constructed just downstream of the LNG Depots and doing so may not impact the schedule or budget of the Project, except to the extent that additional land may be required.

OEB staff submitted that, as a condition of approval, the Applicant should be required to install facilities to receive secondary sources of CNG downstream of the LNG Depots. Doing so would ensure immediate open access to the distribution systems by other gas suppliers (either LNG or CNG) using the virtual pipeline approach. To some extent, this would help mitigate the lack of diversification in the GSP, and would facilitate the use of CNG for peak shaving or emergency back-up supply should the need arise.

In its submission, Certarus argued that CNG is in fact the least cost gas supply option. Certarus stated that it is not opposed to granting the approvals requested in the

Application. However, Certarus recommended that the OEB remove any barrier or impediment that would prevent a CNG supplier from accessing the new market created by the Project through an “open access regime”.

In its submission, NLNG questioned the costs and reliability of a CNG supply option. Furthermore, NLNG noted that there are no provisions in the Contract that would prevent the Utility from contracting for other sources of natural gas supply.

In its reply argument, the Applicant did not agree that it should be required to install CNG-related facilities in the absence of consideration by the OEB of a study that the Applicant intends to prepare and include in Phase 2 of the proceeding. The study would examine the feasibility of constructing and operating the facilities required to enable the Utility to take receipt of CNG gas for use as a secondary source of system supply (i.e., for peak sharing or emergency backup). However, the Applicant stated that such a study should not be construed as an agreement to the imposition of mandated open access for competitive CNG and LNG retailers. The Applicant submitted that the pool of potential customers within the five Municipalities is not sufficiently large to support an open access regime.

NLNG’s Fitness to Serve

SEC noted that the only evidence filed to date on NLNG’s fitness to serve is a quote taken from a report that an independent expert undertook for Infrastructure Ontario as a condition of financing under the Natural Gas Grant Program. SEC noted that the quote is supportive. However, SEC notes that neither it nor the OEB has seen the report, so neither can verify its findings nor consider them in their entire context. The Applicant said it cannot produce the report due to the “commercially sensitive nature of the information” contained within. SEC submitted that the OEB should require the Applicant to produce a copy of the report, on a confidential basis pursuant to the OEB’s *Practice Direction on Confidential Filings*, so that in the context of deciding on this Application, the OEB and the parties will be able to review, in a proper way, the assessment made of the NLNG Project.

Findings

The OEB does not approve the Gas Supply Plan as filed.

The OEB expects that a Gas Supply Plan would assess the cost effectiveness and reliability with respect to the commodity, other transactional services and upstream transportation. The proposed Gas Supply Plan has failed to demonstrate that a comprehensive and current assessment of alternatives including CNG was performed.

The Applicant has not given adequate attention in the gas supply planning to the protection of customers in terms of timely access to natural gas, cost competitive service and the approach to risk mitigation with regard for the customers or the Municipalities.

VECC submitted that a specific emergency plan for natural gas supply should be included in the Gas Supply Plan. The OEB agrees that it is critical to ensure adequate supply for Northern Ontario consumers who face severely cold winters where lack of heat could be life threatening. The OEB directs the Applicant to include a specific and rigorous emergency supply plan in their revised Gas Supply Plan.

The Applicant has offered to examine the overall feasibility of constructing and operating the facilities required to enable the utility to take receipt of CNG for use as a secondary source of backup and emergency system supply. The OEB agrees that this feasibility study would be of assistance. As 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 assessment must include evidence on the following:

- a) A more complete and current comparison of the suitability of CNG versus LNG as a primary supply option in a report that addresses the selection of the preferred fuel in terms of all-in landed cost of gas, reliability, land requirements, landowner impacts, environmental impacts, and legal and regulatory requirements
- b) How the role of the Mill may change if CNG is used as the primary supply instead of LNG (e.g., would the payments to CNG, including any fixed payment, vary with the amount of gas delivered)
- c) How CNG would be stored on-site and any difference in associated land requirements compared to LNG
- d) Any safety implications associated with onsite CNG storage compared to LNG
- e) An assessment that shows how the increased number of truck deliveries required for CNG (compared to LNG) increases the probability of a service disruption to end users. At a minimum, evidence should discuss the cost consequences of any increase in service disruptions, whether there is a seasonal variation in the probability of a service disruption as a result of such things as weather and number of hours of daylight per day, and any mitigation strategies

Certarus requested that the OEB approve open access to the Applicant's distribution system. The appropriateness of open access is tied to the appropriateness of the Gas Supply Plan, and since the OEB is not approving the cost consequences of the Gas Supply Plan at this time it cannot make a determination on open access. The OEB appreciates the Applicant's concerns about the feasibility of open access given the small customer numbers and the potential large up-front, fixed costs of LNG (or potentially CNG) service. Although no party raised this, the Gas Distribution Access Rule may also be relevant to this issue. To the extent necessary the OEB will consider open access as part of Phase 2.

The OEB agrees with SEC's suggestion that the confidential report that an independent expert undertook for Infrastructure Ontario as a condition of financing for NLNG under that Natural Gas Grant Program should be filed with the OEB. This report would allow the OEB to be informed about the financial and technical capabilities of NLNG. The OEB directs that this report be filed in confidence in Phase 2.

6 REQUEST FOR PRE-APPROVAL OF COST CONSEQUENCES OF LNG SERVICES AGREEMENT

In the Application, the Applicant requested approval pursuant to the OEB's *Filing Guidelines for Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts* of the cost consequences of a long-term gas supply contract referred to as the LNG Services Agreement (Contract) that it proposes to enter into with NLNG. An un-executed draft of the Contract was filed with the Application. The Applicant indicated that the Contract would not be executed until the OEB granted pre-approval for the cost consequences.

The cost consequences of the Contract relate chiefly to:

- a) A Firm Capacity Charge that is payable on a take-or-pay basis, regardless of the amount of NLNG's capacity that is used by the Utility
- b) A Variable Charge that is the charge per GJ payable to NLNG for each GJ of LNG produced, stored and regasified by NLNG to recover the costs of consumables used in providing the LNG Services
- c) Truck Transportation Services fees which are payable to NLNG for transportation of LNG to the LNG Depots
- d) The cost to the Utility for provision of financial security to NLNG for its obligations under the Contract
- e) The length of the Initial Term of the Contract
- f) The allocation of risk (e.g., liability of the Utility to make a termination payment in the event that NLNG fails to satisfy certain conditions precedent and the Contract)
- g) The force majeure provisions to permit the Utility to procure alternative supplies of natural gas were NLNG to declare force majeure, and whether NLNG should have any other rights to interrupt the provision of the LNG Services

No party took the position that the Contract does not qualify for consideration by the OEB for cost pre-approval pursuant to the OEB's *Filing Guidelines for Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts*. However, SEC, VECC and OEB staff expressed concerns that the provisions of the Contract do not adequately protect the Utility (and by extension its ratepayers). As a result of their concerns, these parties recommended that the OEB not approve the cost consequences of the Contract as currently drafted. The concerns raised are summarized below.

Uncertain Costs in the Contract

Under the proposed Contract, NLNG will charge the Utility a fee intended to recover its variable costs of the services of the liquefaction, storage, transportation and dispensing (Variable Charge). The amount of the Variable Charge will be updated annually. In an interrogatory response the Applicant estimated that the charge would be approximately \$0.34 per GJ¹⁰. However, this amount does not appear in the Contract itself. Although the Applicant states that NLNG will set the Variable Charge without mark-up, the Contract does not specify this. The Contract simply allows NLNG to set the amount of the Variable Charge. The interrogatory response further states that the Utility will have the ability to “audit” the variable charge to verify the accuracy of any statement, charge, or computation but, it is not clear that this provides any remedy for excessive Variable Charges.

Under the proposed Contract, the Utility will pay all of the costs (without mark-up) for the truck transportation services. However, the costs are not specified. In an interrogatory response, the Applicant estimated that these costs would be approximately \$2.54 per kilometer, or approximately \$0.84 per GJ. The response noted, however, that this was not a firm price, and the final price will be subject to commercial negotiations following receipt of conditional approval of the Application. NLNG will not itself provide the truck transportation service – it will negotiate with a third party for provision of that service. It is unclear whether the Utility will be a party to those negotiations.

Under the proposed Contract, the Utility must provide, upon request, a financial backstopping agreement. The purpose of the financial security is to ensure that NLNG recovers the entire 10 year Firm Capacity Charges, even if the Contract is terminated (for whatever reason) prior to the end of the 10 year term. SEC and OEB staff submitted that the cost of the financial backstop could be substantial. The Applicant stated it expects to be required to provide this security, and that the cost consequences of providing it are not known at this time.

Allocation of Risk in the Contract

SEC, VECC and OEB staff expressed concerns that the Contract appears designed to protect NLNG from risk, and much less so to protect the Utility and therefore its ratepayers.

¹⁰ Applicant’s response to OEB staff interrogatory No. 41 b)

The Firm Capacity Charge is a minimum set amount that the Utility is required to pay for a certain quantity of natural gas every day, and the quantity varies by year. The Firm Capacity Charge allows NLNG to recover the capital investment of the LNG facility. OEB staff noted that the LNG facility has not yet been built, and that it is unaware of any other current customers of NLNG.

This minimum charge must be paid irrespective of whether the LNG is actually required or delivered. The Firm Capacity Charge is \$7.03 per GJ. The proposed initial term is ten years. If the Utility exercises the option to extend the Contract for an additional 10 year term, the Fixed Capacity Charge will escalate by 1.5% annually.

OEB staff noted that the take or pay nature of the Contract means that the Utility will be required to pay a minimum charge per day from day one, irrespective of how many customers have signed up or been connected. OEB staff submitted that this is a significant level of risk, not only to the Utility but to the customers to whom the Utility intends to pass on all of these costs.

The Contract allows NLNG to terminate the Contract if (amongst other things) NLNG itself fails to obtain the regulatory and government approvals necessary to operate the LNG facility. Section 10.4 further provides that if the Contract is terminated, the Utility will be required to pay all of the costs accrued by NLNG for the construction and development of the LNG storage depots. In other words, the Utility is responsible for unspecified costs even if the Project does not go forward on account of NLNG's failure to obtain all necessary approvals.

The Contract provides that NLNG will not be responsible for any claims, losses, damages, etc., suffered by the Utility related to NLNG's conduct except where there has been gross negligence or willful misconduct. The Utility, however, is responsible for any and all of NLNG's claims, losses, etc., related to the Utility's conduct irrespective of whether any negligence was involved. There is also a cap on the amount of NLNG's potential liability, but no cap on the Utility's potential liability.

Certarus submitted that the force majeure provisions of the Contract do not permit the Utility to procure replacement natural gas delivery services in the event that NLNG declares force majeure. VECC expressed concern that the right of NLNG to interrupt the provision of service to the Utility to be inconsistent with the Utility protecting its customers. In its reply, the Applicant stated that Certarus' interpretation of the force majeure provisions is incorrect and that VECC's concern appears to be based on a misapprehension that the LNG facilities can be operated continuously without the need for maintenance which might require shutdowns. The Applicant submitted that the OEB should disregard these concerns.

Initial Term of the Contract

OEB staff expressed concerns about the duration of the initial term of the Contract. OEB staff submitted that a longer initial term (e.g., 15 years instead of 10 years) would better align the Contract duration with the life span of the assets and would generate annual savings for customers as fixed cost recovery would be spread over a longer period of time. OEB staff noted that the Applicant estimated that extending the 10 year Contract to 15 years and 20 years would reduce all-in residential bills by 3.7% and 6.3%, respectively.

In its reply argument, the Applicant submitted that the term of the Contract should remain structured as an initial 10 year period, renewable for a further 10 years at the Utility's option. The Applicant argued that this will provide the Utility with the flexibility, after 10 years, to renegotiate the terms of the agreement to better align the terms to reflect the Utility's requirements and actual attachment rates at the time or to avail itself of alternative lower cost service that may be available, at the time. This flexibility will be of value to the Utility's ratepayers and, for this reason, the term of agreement should remain as drafted.

Regulation of LNG

In their submissions, SEC and VECC each questioned whether the OEB has rate setting jurisdiction over NLNG. Although SEC noted that this question is not directly at issue in this Application, both parties argued that the OEB should consider whether NLNG is providing transmission, distribution or storage services and therefore be subject to section 36 of the OEB Act.

In its reply submission, the Applicant took the position NLNG does not require OEB approval for rates and charges for services under the Contract, and, in any event, this question is out of scope of this proceeding.

Summary of Intervenor Submissions

SEC, VECC and OEB staff submitted that the OEB should not approve the cost consequences of the Contract as it is currently drafted.

OEB staff submitted that the OEB could consider approving a portion of the cost consequences of the Contract. For example it could approve the cost consequences of the Firm Capacity Charge (or a portion thereof) as set out in the Contract. Similarly, the OEB could consider capping the Variable and Trucking Charges at the lower of the following, with any savings resulting from lower actual charges being passed on to customers:

- a) The amounts estimated in the Application and interrogatory responses
- b) The results of a competitive procurement process for LNG trucking services

OEB staff submitted that this proposed approach does not mean that the Utility would be barred from seeking to recover these costs in a future rates application. However, pre-approval of the cost consequences of a gas supply contract is an exception to the OEB's ordinary practice. The OEB should only pre-approve costs where it has reasonable certainty as to what those costs will be, and that it is confident that the costs themselves are reasonable.

Applicant Response to Intervenor Concerns

In its reply submission, the Applicant acknowledged the comments made by the parties regarding the terms and conditions of the Contract. The Applicant stated that it will seek to renegotiate the terms of the Contract, except for those provisions related to Firm Capacity Charge, daily committed capacity, term, and force majeure / service interruption.

Findings

The OEB agrees with many of the concerns raised by the parties that the proposed Contract as currently drafted does not appear to provide a balanced treatment of the risks, or to be in the best interest of customers.

The OEB is surprised to note that the Contract indicates that the Utility can be responsible for significant (though unspecified) costs even if the Project does not go forward on account of NLNG's failure to obtain all necessary approvals. The suggestion that NLNG intends to serve customers other than the Utility at some point with no suggestion that the Utility would receive some reduction to the firm charge to account for this benefit to NLNG does not reflect the normal terms of a commercial competitive contract.

The Applicant has requested that the OEB approve the Firm Capacity Charge. However, there are too many potential factors that could change the costs for the OEB to approve the Firm Capacity Charge.

As OEB staff and SEC observed, the Contract appears designed to protect NLNG from risk, and much less so to protect the Utility and therefore its ratepayers. The Contract requires financial security from the Applicant. However, given the risk of non-performance by NLNG, the OEB observes that the Utility should have some form of financial protection if NLNG fails to provide gas supply. The OEB agrees with submissions that the OEB should reject pre-approval of the cost consequences of the

Contract unless the liability provisions are amended to ensure they are more symmetrical and fair.

The duration of the Contract was a concern for OEB staff. The OEB would like to better understand how the current 10-year Contract proposal impacts cost recovery versus an initial 15-year contract as proposed by OEB staff. Also the suggestion that the Contract not be renewed for an additional 10-years but be open for competitive bids needs to be better understood from the perspective of impact on customers.

SEC and VECC recommended that the OEB consider whether, pursuant to Section 36 of the OEB Act, the NLNG Facility should be rate regulated. Any potential regulation of the NLNG facility would be considered in a future proceeding and is out of scope in this proceeding.

The applicant indicated a willingness to re-negotiate Contract terms of the long-term LNG supply contract with NLNG. The OEB will consider the cost consequences related to the re-negotiated Contract in Phase 2 of the proceeding. The OEB approves none of the terms proposed including the Firm Capacity Charge, the maximum contract volume and the force measure terms. The areas of particular concern have been detailed throughout this section.

7 CONDITIONS OF APPROVAL

As part of an interrogatory, OEB staff asked the Applicant to comment on a set of proposed conditions of approval. Most of the proposed conditions were standard for LTC applications. In response, the Applicant requested that condition No. 4 be adjusted such that it allows for 24 months between LTC approval and the beginning of construction as opposed to the standard 12 months. OEB staff submitted that it has no concerns with the requested change.

In their submissions, LL#58FN, SEC, VECC and OEB staff proposed additional conditions of approval to mitigate and / or reallocate risks associated with the customer addition forecast, environmental matters, the GSP and the Contract.

Findings

The OEB finds that it is premature to issue the conditions of approval related to the LTC, certificates, GSP and Contract at this time. If the Applicant can satisfy the OEB's additional information requirements to approve the Application, any necessary conditions will be imposed at a later date.

As a condition of the approval of the MFAs, the OEB requires the Applicant to file copies of the MFAs between the MEDC and each of the Township of Manitouwadge, the Township of Schreiber, the Township of Terrace Bay and the Municipality of Wawa.

SEC's recommendation that communication to allow customers to better assess the risks prior to making financial investments in changing their systems be added to the Conditions of Approval will be assessed as part of the final approval.

8 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The Applicant's request under section 90 of the OEB Act for leave to construct is not granted at this time. The OEB will revisit the request after it has completed its review of additional evidence filed by the Applicant as part of Phase 2.
2. The Applicant's request under section 97 of the OEB Act for approval of the proposed form of Working Area Access Agreement is granted.
3. The Applicant's request under section 8 of the Municipal Franchises Act for certificates of public convenience and necessity is not granted at this time. The OEB will revisit the request after it has completed its review of additional evidence filed by the Applicant as part of Phase 2.
4. The Applicant's request under section 9 of the Municipal Franchises Act for approval of the terms and conditions upon which, and the period for which, the Municipalities are, by by-law, to grant to the Marathon Economic Development Corporation the right to construct and operate works for the distribution, transmission and storage of natural gas, and the right to extend and add to the works, in the Town of Marathon, as set out in the municipal franchise agreement attached as Schedule C, is granted. The OEB's approval of the MFAs between the MEDC and each of the Township of Manitouwadge, the Township of Schreiber, the Township of Terrace Bay and the Municipality of Wawa is granted conditional on the Applicant filing with the OEB copies of these agreements.
5. The Applicant's requests under section 36 of the OEB Act for approval of the Gas Supply Plan and for the pre-approval of the cost consequences of the long-term LNG supply contract are not granted at this time. The OEB will revisit these requests after it has completed its review of additional evidence filed by the Applicant as part of Phase 2.

DATED at Toronto February 27, 2020

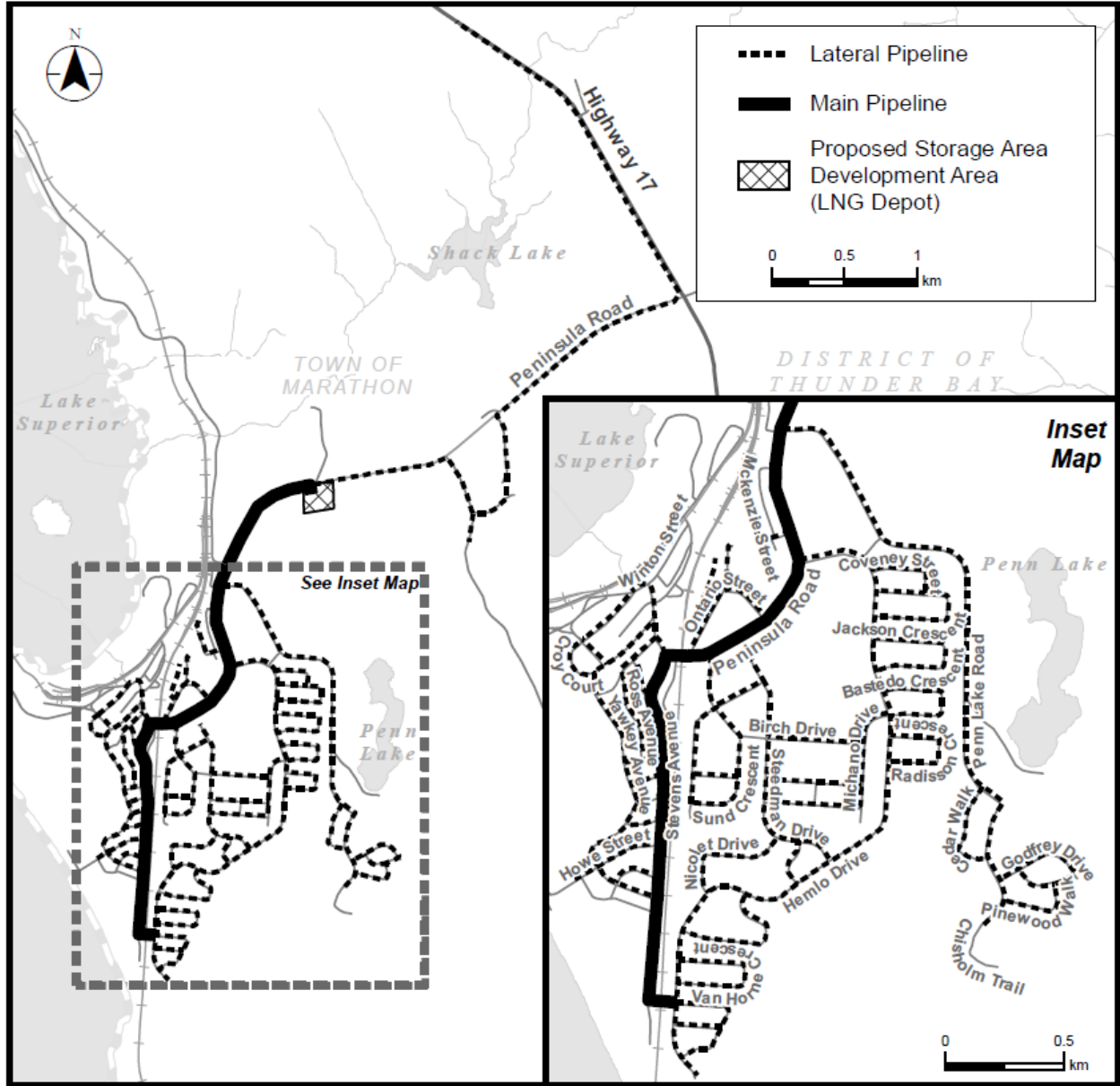
ONTARIO ENERGY BOARD

Original Signed By

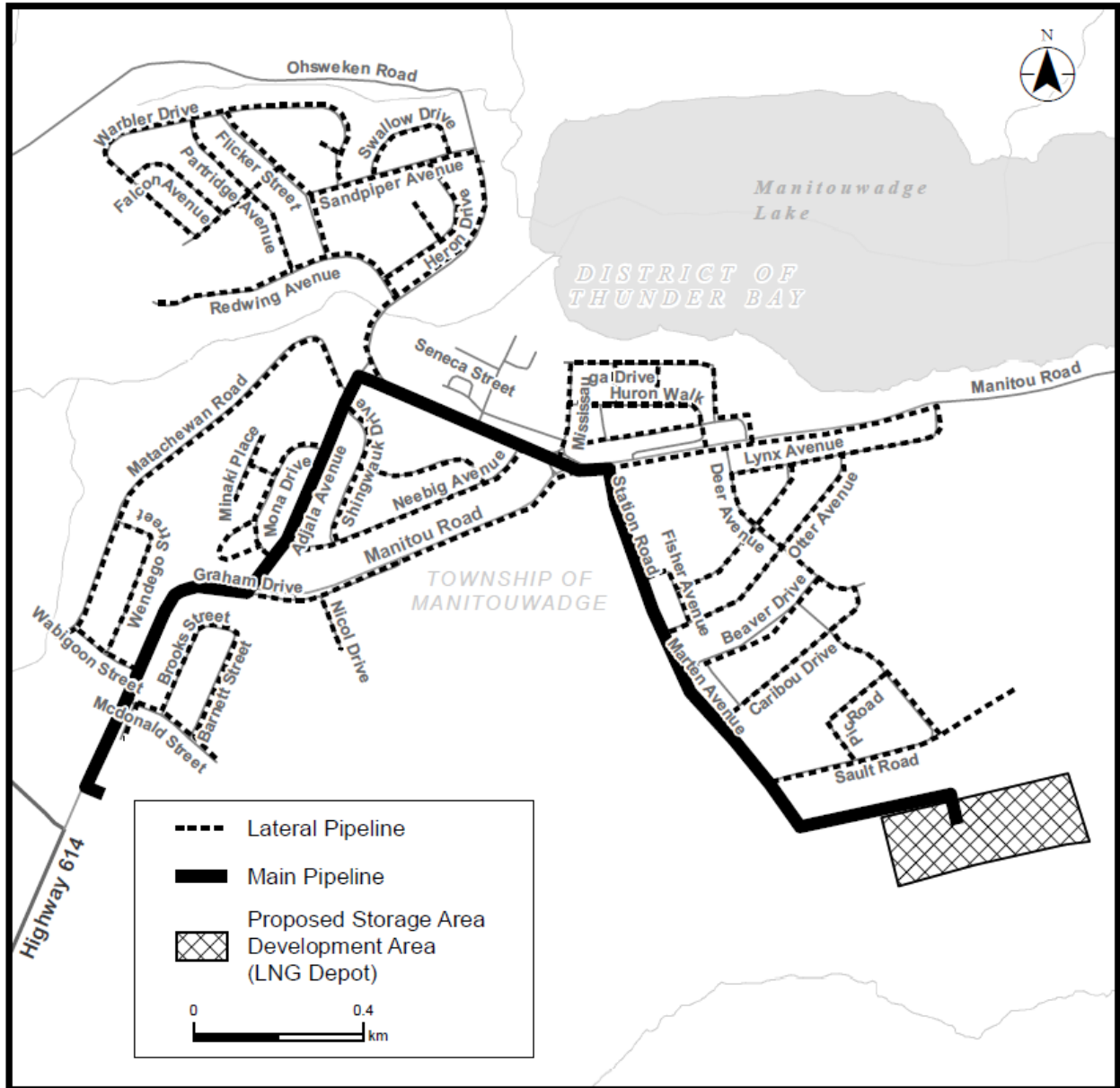
Christine E. Long
Registrar and Board Secretary

SCHEDULE A
DECISION AND ORDER
TOWN OF MARATHON
EB-2018-0329
FEBRUARY 27, 2020

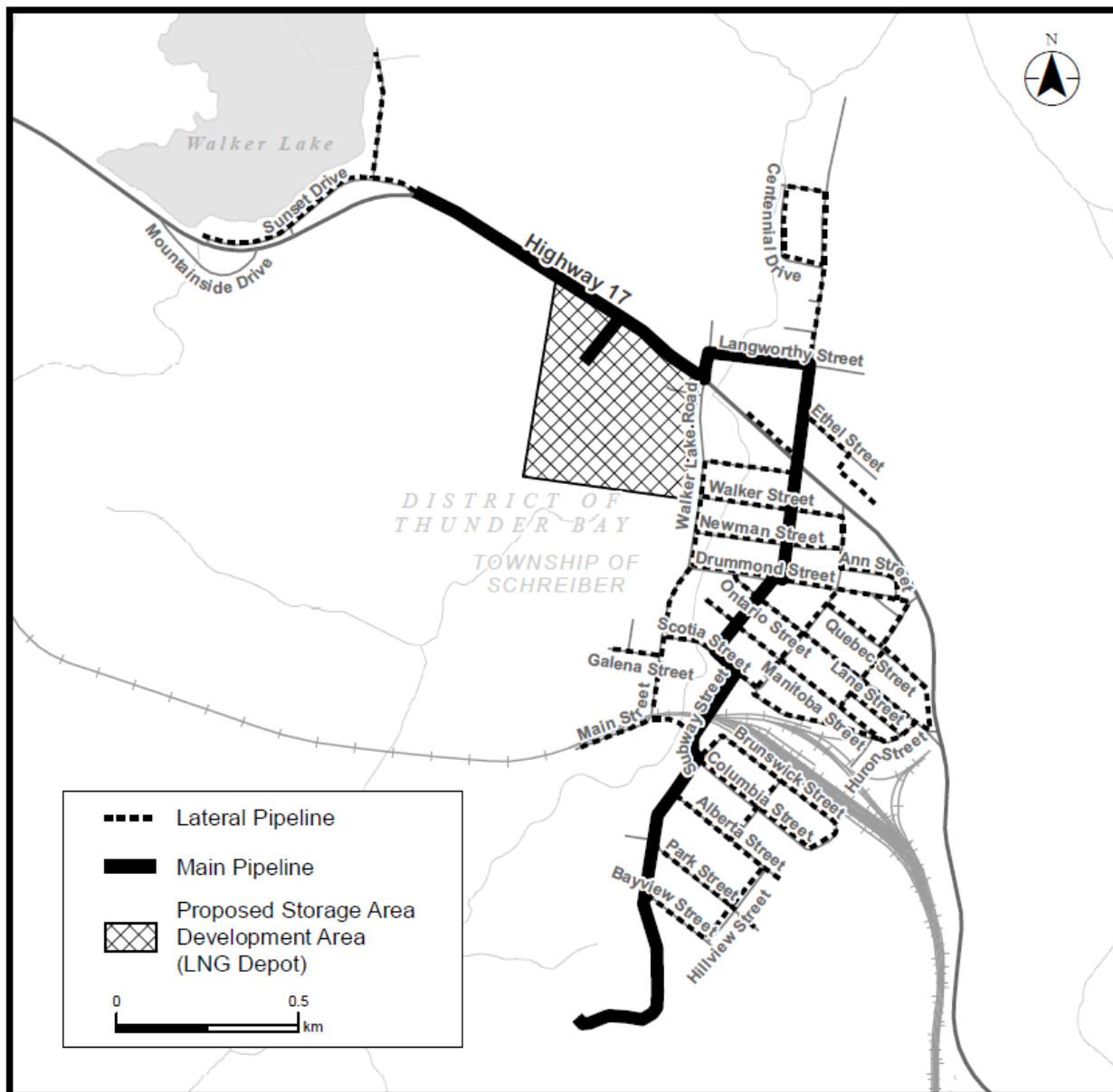
Schedule A1 – Marathon Route Map



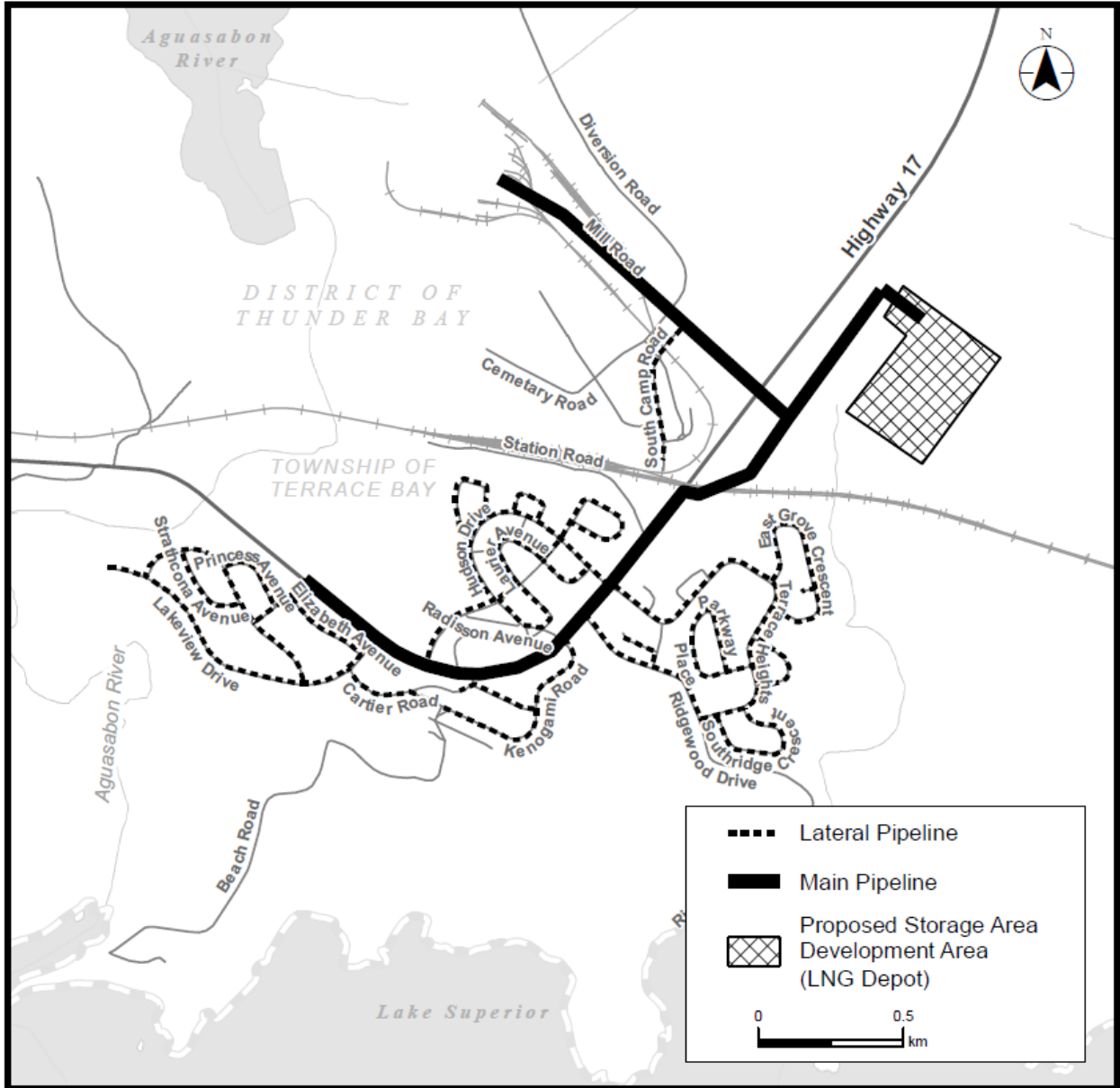
Schedule A2 – Manitowadge Route Map



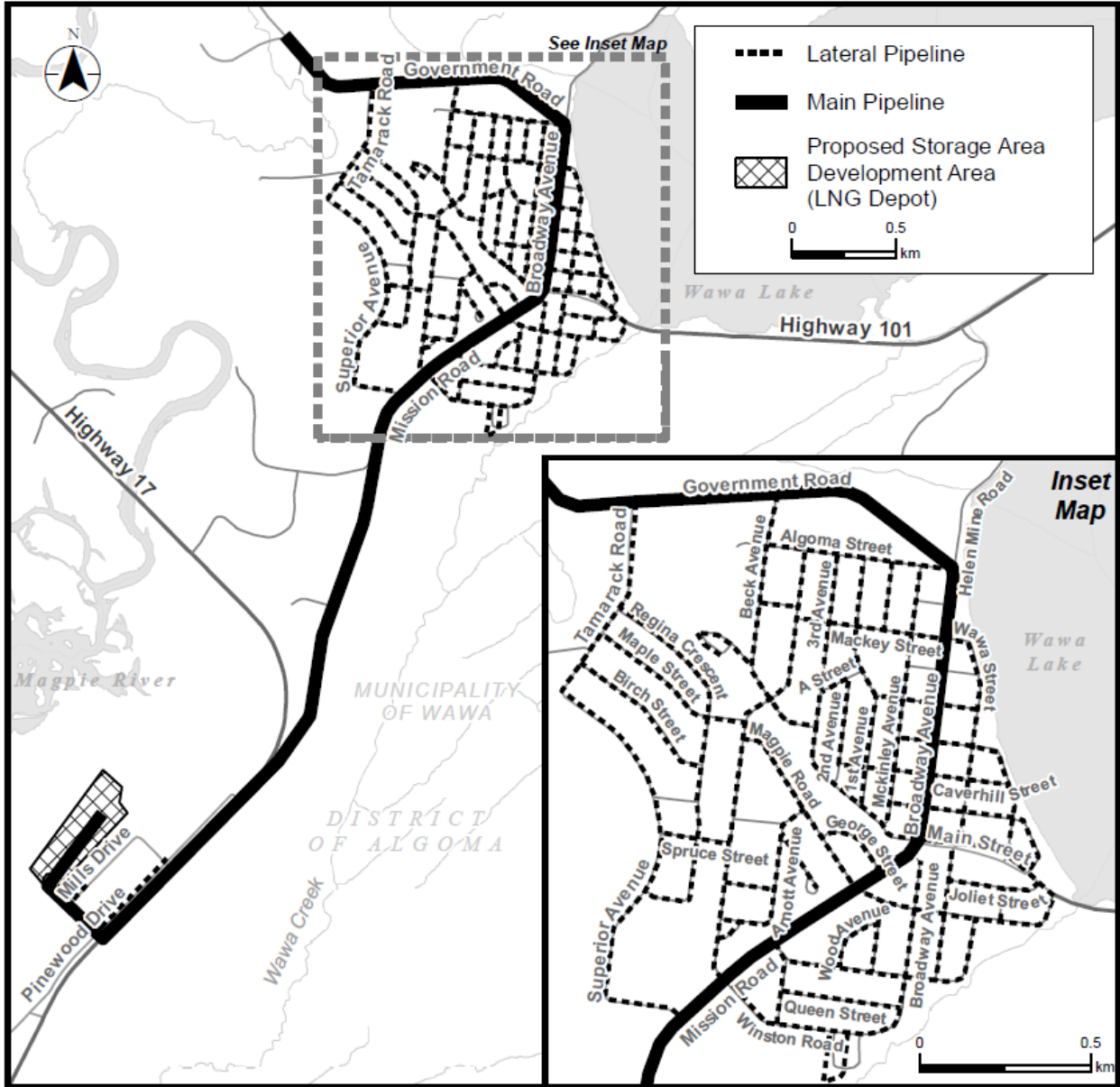
Schedule A3 – Schreiber Route Map



Schedule A4 – Terrace Bay Route Map



Schedule A5 – Wawa Route Map



SCHEDULE B
DECISION AND ORDER
TOWN OF MARATHON
EB-2018-0329
FEBRUARY 27, 2020

SCHEDULE B – CONDITIONS OF APPROVAL
Corporation of the Township of Marathon
North Shore Project
OEB File No. EB-2018-0329

1. The OEB's approval of the MFAs between the MEDC and each of the Township of Manitouwadge, the Township of Schreiber, the Township of Terrace Bay and the Municipality of Wawa is granted conditional on the Applicant filing with the OEB copies of these agreements.

SCHEDULE C
DECISION AND ORDER
TOWN OF MARATHON
EB-2018-0329
FEBRUARY 27, 2020

SCHEDULE C – MUNICIPAL FRANCHISE AGREEMENTS
Corporation of the Township of Marathon
North Shore Project
OEB File No. EB-2018-0329

Model Franchise Agreement

THIS AGREEMENT effective this day of May, 2019

BETWEEN:

Town of Marathon

hereinafter called the "Corporation"

- and -

Marathon Economic Development Corporation,
for and on behalf of an entity to be formed or
corporation to be incorporated

hereinafter called the "Gas Company"

WHEREAS the Gas Company desires to distribute, store and transmit gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS by by-law passed by the Council of the Corporation (the "By-law"), the duly authorized officers have been authorized and directed to execute this Agreement on behalf of the Corporation;

THEREFORE the Corporation and the Gas Company agree as follows:

Part I - Definitions

1. In this Agreement:
 - a. "decommissioned" and "decommissions" when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term 'abandoned' pipeline for the purposes of the *Assessment Act*;
 - b. "Engineer/Road Superintendent" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;

- c. "gas" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;
- d. "gas system" means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;
- e. "highway" means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the Corporation;
- f. "Model Franchise Agreement" means the form of agreement which the Ontario Energy Board uses as a standard when considering applications under the *Municipal Franchises Act*. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;
- g. "Municipality" means the territorial limits of the Corporation on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation;
- h. "Plan" means the plan described in Paragraph 5 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and
- i. whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

Part II - Rights Granted

2. To provide gas service:

The consent of the Corporation is hereby given and granted to the Gas Company to distribute, store and transmit gas in and through the Municipality to the Corporation and to the inhabitants of the Municipality.

3. To Use Highways.

Subject to the terms and conditions of this Agreement the consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

4. Duration of Agreement and Renewal Procedures.

- a. If the Corporation has not previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law.
- b. At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

Part III - Conditions

5. Approval of Construction

- a. The Gas Company shall not undertake any excavation, opening or work which will disturb or interfere with the surface of the travelled portion of any highway unless a permit therefor has first been obtained from the Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.
- b. Prior to the commencement of work on the gas system, or any extensions or changes to it (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a Plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific locations involved, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy.
- c. The Plan filed by the Gas Company shall include geodetic information for a particular location:
 - i. where circumstances are complex, in order to facilitate known projects, including projects which are reasonably anticipated by the Engineer/Road Superintendent, or
 - ii. when requested, where the Corporation has geodetic information for its own services and all others at the same location.
- d. The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth than required by the latest CSA standard for gas pipeline systems to facilitate known projects or to correct known highway deficiencies.
- e. Prior to the commencement of work on the gas system, the Engineer/Road Superintendent must approve the location of the work as shown on the Plan filed by the Gas Company, the timing of the work and any terms and conditions relating to the installation of the work.

- f. In addition to the requirements of this Agreement, if the Gas Company proposes to affix any part of the gas system to a bridge, viaduct or other structure, if the Engineer/Road Superintendent approves this proposal, he may require the Gas Company to comply with special conditions or to enter into a separate agreement as a condition of the approval of this part of the construction of the gas system.
- g. Where the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the Corporation's Drainage Superintendent for purposes of the *Drainage Act*, or such other person designated by the Corporation as responsible for the drain.
- h. The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.
- i. The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.
- j. The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

6. As Built Drawings.

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings in an electronic format and one copy as a hard copy drawing.

7. Emergencies

In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior approval of the Engineer/Road Superintendent is normally required for the work, the Gas Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.

8. Restoration

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or

removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent.

9. Indemnification

The Gas Company shall, at all times, indemnify and save harmless the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

10. Insurance

- a. The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the Corporation from claims for which the Gas Company is obliged to indemnify the Corporation under Paragraph 9. The insurance policy shall identify the Corporation as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the Corporation by the Gas Company.
- b. The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.
- c. Upon request by the Corporation, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.

11. Alternative Easement

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 12 of this Agreement.

12. Pipeline Relocation

- a. If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.
- b. Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.
- c. Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:
 - i. the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,
 - ii. the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,
 - iii. the amount paid by the Gas Company to contractors for work related to the project,
 - iv. the cost to the Gas Company for materials used in connection with the project, and
 - v. a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.
- d. The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

Part IV - Procedural And Other Matters

13. Municipal By-laws of General Application

The Agreement is subject to the provisions of all regulating statutes and all municipal by-laws of general application, except by-laws which have the effect of amending this Agreement.

14. Giving Notice

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the Corporation at its municipal offices, as the case may be.

15. Disposition of Gas System

- a. If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.
- b. If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 5 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the decommissioned gas system as the Corporation may require for such purposes and neither party shall have recourse against the other for any loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 12 applies to the cost of relocation.

16. Use of Decommissioned Gas System

- a. The Gas Company shall provide promptly to the Corporation, to the extent such information is known:
 - i. the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and
 - ii. the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.

- b. The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided
 - i. the third party has entered into a municipal access agreement with the Corporation; and
 - ii. the Gas Company does not charge a fee for the third party's right of access to the highways.
- c. Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

17. Franchise Handbook

The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.

18. Other Conditions

The Gas Company shall be entitled to assign this Franchise Agreement to any other corporation that shall have acquired all right, title, and interest in and to the gas system concurrently with the assignment of this Agreement, provided that of the assignor shall enter into an assignment agreement with the Corporation, wherein it shall agree to be bound by the provisions of this Agreement and all obligations of the Gas Company as if an original party hereto.

19. Agreement Binding Parties

This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the parties have executed this Agreement effective from the date written above.

THE CORPORATION OF THE TOWN OF MARATHON

By: _____

By: _____

We have authority to bind the corporation

MARATHON ECONOMIC DEVELOPMENT CORPORATION,
for and on behalf of an entity to be formed
or corporation to be incorporated

By: _____

By: _____

We have authority to bind the corporation.

SCHEDULE D
DECISION AND ORDER
TOWN OF MARATHON
EB-2018-0329
FEBRUARY 27, 2020

SCHEDULE D – PHASE 2 INFORMATION REQUIREMENTS

Corporation of the Township of Marathon

North Shore Project

OEB File No. EB-2018-0329

The OEB will not issue its final decision in this proceeding until it has received and reviewed the following additional information to be filed as part of Phase 2.

Item	Requirement	Ref.
1	Mill Risk Mitigation Plan A plan to mitigate the current reliance on a single industrial customer to meet the Contract conditions with NLNG. The Mill Risk Mitigation Proposal must include a letter of credit or similar financial security from the Mill, a change to the contract with NLNG to lower the fixed payments in the case of a reduction in the gas demanded, and / or another source of revenue equivalent to the amount currently forecast from the Mill.	p. 16
2	Rate Stability Period (RSP) Proposal A RSP proposal to prevent the risks associated with the customer attachment forecasts and cost overruns from being exclusively on the account of the customers. A typical RSP approach in utility expansions is to offer a 10-year rate stabilization period. A typical rate stabilization period should allow the majority of converting customers to recover their conversion investment.	p. 16
3	Utility’s Financial and Technical Fitness to Serve Information demonstrating the Utility’s financial and technical fitness to serve including the information listed in Exhibit A, Tab 3, Schedule 1, pages 5 and 6.	p. 17
4	Gas Supply Plan (GSP) - Emergency Supply Plan A specific and rigorous emergency supply plan as part of a revised GSP.	p. 21
5	GSP - CNG Assessment As part of a revised GSP, a more detailed assessment of the CNG option that takes into consideration use of CNG supply as the primary supply to the Municipalities. The assessment must include evidence on the following: a) A more complete and current comparison of the suitability of CNG versus LNG as a primary supply option in the form of a report that	p. 21

	<p>addresses the selection of the preferred fuel in terms of all-in landed cost of gas, reliability, land requirements, landowner impacts, environmental impacts, and legal and regulatory requirements</p> <p>b) How the role of the Mill may change if CNG is used as the primary supply instead of LNG (e.g., would the payments to CNG, including any fixed payment, vary with the amount of gas delivered)</p> <p>c) How CNG would be stored on-site and any difference in associated land requirements compared to LNG</p> <p>d) Any safety implications associated with onsite CNG storage compared to LNG</p> <p>e) An assessment that shows how the increased number of truck deliveries required for CNG (compared to LNG) increases the probability of a service disruption to end users. At a minimum, evidence should discuss the cost consequences of any increase in service disruptions, whether there is a seasonal variation in the probability of a service disruption as a result of such things as weather and number of hours of daylight per day, and any mitigation strategies</p>	
6	<p>Submissions on “Open Access” A submission relating to whether the Utility’s system should be open to gas vendors, including a discussion on how the Applicant’s proposal is consistent with the Gas Distribution Access Rule (or whether an exemption is sought).</p>	p. 22
7	<p>Confidential Report on NLNG for Infrastructure Ontario The confidential report that an independent expert undertook for Infrastructure Ontario as a condition of financing for NLNG under that Natural Gas Grant Program. The OEB directs that this report be filed in confidence.</p>	p. 22
8	<p>Renegotiated Long-term LNG Services Agreement (Contract) A renegotiated version of the Contract with NLNG. The areas of particular concern have been detailed throughout section 6 – Request for Pre-Approval of Cost Consequences of LNG Services Agreement.</p>	p. 28