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OEB Issues Decision on Proposal by Municipalities to Form New Natural Gas Distributor

By Fred D. Cass

On February 27, 2020, the Ontario Energy Board issued a decision in respect of a proposal for a new natural gas distribution company to distribute gas in municipalities located on the north shore of Lake Superior between Nipigon and Sault Ste. Marie.

In the OEB proceeding, it was proposed that the new utility would acquire its gas supply through a liquefied natural gas (LNG) supply contract with Nipigon LNG Limited Partnership (NLNG). LNG would be trucked from an LNG facility to the municipalities and stored locally in LNG depots. NLNG would be responsible for the LNG facility, the trucking of LNG and the construction of LNG depots and these “upstream elements” were not part of the application to the OEB. The new utility would distribute re-gasified LNG through separate pipeline systems in the municipalities. A proposed LNG supply contract between the utility and NLNG was within the scope of the application.

Marathon Economic Development Corporation (MEDC) is developing the gas distribution project as agent on behalf of the municipalities and the application to the OEB was made by the Town of Marathon as agent for MEDC. Because the utility has not yet been fully organized, the applicant proposed a two-phased approach for the application. In Phase 1, the approvals from the OEB requested by the applicant included a conditional leave to construct pipelines and ancillary facilities, the granting of certificates of public convenience and necessity, approval of municipal franchise agreements and approval of a gas supply plan.

The OEB found that there is a need for the project, it accepted the evidence on the proposed gas distribution facilities and routes, and it was satisfied that the environmental impacts of the project had been adequately mitigated. However, the OEB expressed concern about the economic viability of the project. The OEB said that it would not give final approval to the application until it has received and reviewed a plan to mitigate the current reliance on a single customer to meet the contract conditions with NLNG and a rate stability period proposal to prevent the risks associated with customer attachment forecasts and cost overruns from being exclusively on the account of customers.

The OEB also did not approve the proposed gas supply plan or, more specifically, the cost consequences of the plan. It directed the applicant to include a specific and rigorous emergency supply plan in a revised gas supply plan and it said that, as part of Phase 2, the applicant must provide a more detailed assessment of a compressed natural gas (CNG) option as a potential alternative to LNG for the primary supply to the municipalities. With respect to the proposed LNG supply contract, the OEB said that the contract appears designed to protect NLNG from risk and much less so to protect the utility and its ratepayers. The applicant had indicated a willingness to renegotiate terms of the LNG supply contract and the OEB said that it would consider the cost consequences related to the renegotiated contract in Phase 2 of the proceeding.

The OEB approved the proposed municipal franchise agreements between MEDC and each of the municipalities and it said that, since information about the utility’s financial capacity and technical capability will be filed in Phase 2 of the proceeding, it will make a determination at that time on the request for the granting of certificates of public convenience and necessity. The OEB found that the applicant had followed the OEB’s environmental guidelines with respect to indigenous consultation, but said that, because the leave to construct application was not being approved as part of the decision, it was not making any final findings with respect to the adequacy of consultation.

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