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## OEB Reaffirms That Proposal By New Gas Distributor Must Include Assessment of CNG Option

By Fred D. Cass

We previously wrote about a decision of the Ontario Energy Board regarding 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. The proposal addressed by the OEB in the decision was that the new distributor would acquire its gas supply through a liquefied natural gas (LNG) supply contract with Nipigon LNG Limited Partnership.

As noted in our previous *Energy Insider* post, the OEB did not approve the proposed gas supply plan for the new distributor (or, more specifically, the cost consequences of the plan) because, among other things, it said that, as part of Phase 2 of the proceeding, the new distributor 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. This aspect of the OEB's decision was the focus of a review motion brought by Red Rock Indian Band (RRIB) and Bingwi Neyaashi Anishinaabek First Nation.

The grounds for the review motion were, first, that the OEB failed to consider that the prospective CNG supplier had not meaningfully engaged with the Moving Parties in respect of the operation of a CNG facility located on RRIB traditional territory and, second, that the proposed project would be delayed or even imperiled by the requirement for a more detailed assessment of CNG as a supply option. The OEB's Rules state that, on a review motion, the OEB may determine a threshold question of whether the matter should be reviewed before the OEB conducts any review of the merits of the motion. In a decision issued on June 4, 2020, the OEB concluded that the grounds for the review motion did not pass the threshold test and it dismissed the motion.

On the first of the two grounds for the review motion, the OEB noted that, while there appeared to be a dispute between the prospective CNG supplier and the Moving Parties about the level of engagement that had occurred with respect to the CNG supplier's Red Rock facility, this was not a reason to overturn the OEB's direction that the new gas distributor's gas supply plan provide a more detailed assessment of using CNG as the primary supply option. Should a re-filed gas supply plan recommend using the Red Rock facility as a supply option, and should the Moving Parties believe there is a legal impediment to the use of this facility, then such arguments can be raised in Phase 2 of the proceeding.

On the second of the two grounds for the review motion, the OEB said that its decision did not mandate any particular conclusion with respect to the best source of supply for the project, nor did it pre-suppose that CNG will be the preferred option. It required that a proper analysis of the potential options be provided in Phase 2. The OEB's objective was to exercise due diligence in ensuring that feasible alternatives have been considered and adequately assessed. This is consistent with OEB's *Framework for the Assessment of Distributor Gas Supply Plans*, which requires an applicant to consider various supply options and to provide the OEB with details and analysis demonstrating why it selected its proposed option. As for arguments about potential delay, the OEB noted that additional work for the new distributor to assess gas supply alternatives is related specifically to the gas supply plan component of the new distributor's application and should not significantly impact the schedule of other parts of the application.

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