

EB-2015-0166
EB-2015-0175

Application by Union Gas Limited and Enbridge Gas Distributors re. the NEXUS pipeline

Procedural Order No. 2 states:

1. Mr. Tolmie shall not file the evidence set out in his letter of September 22, 2015 with the OEB

To date none of the parties to EB-2015-0166/0175 has responded to the Notice of Motion issued by the Board on Oct 5/2015. That may leave the Motion open to the interpretation that if none of the other intervenors responds to the Notice then under Part (3) of the Board's Order (within their letter) I will not have grounds for filing the evidence that may be needed to explain why the OEB should not issue its pre-approval of the NEXUS pipeline.

As observed in my letter of Sept 22 (and cited in the Board's Motion) the evidence that I believe the Board should consider is contained in a variety of reports, mostly issued by Canadian government agencies, that should not require expert witnesses for their interpretation. While it might be within the Board's discretion to accept arguments based on such reports without filing the documents that are referred to, such a practice would preclude the opportunity for all of the other parties to consider that evidence (and the related arguments) in preparing their own arguments.

The title of the Application before the Board is "Applications for pre-approval of the cost consequences of long-term natural gas transportation contracts with NEXUS Gas Transmission". I had submitted that the cost consequences of such a pre-approval would be very substantial for energy users in Ontario. That includes everyone who uses natural gas for heating, everyone who uses electricity that is generated by natural gas-fired generators, and everyone who will bear the costs of the environmental consequences.

The Board staff prepared a list of four issues to be considered (listed in Procedural Order No. 1). One deals primarily with the internal business of the applicant but the other three deal with the merits of the application. The first issue is:

1. Has the applicant adequately demonstrated the need, costs and benefits of the proposed project?

The evidence that I would like to submit shows that there is no need for the NEXUS pipeline, that building such a pipeline would over the approval period cost Ontario residents very considerable amounts of money, and that on balance any benefits of this project would be minor in comparison with its drawbacks.

The reasons are not self-evident. They require valid evidence and explanations. Obviously it will be up to the Board to weigh that evidence and the arguments but that would be difficult to do if the evidence and consequent arguments are not available to the Board.

I had appealed Procedural Order No. 2. The procedures for appeals are outlined in the Section 17 of the Board's "Rules of Practice and Procedure".

The general interpretation of how the Rules should be applied are laid out in Part 1 - General, Section 2, which states in part:

2.01 These Rules shall be liberally construed in the public interest to secure the most just, expeditious and efficient determination on the merits of every proceeding before the Board.

Presumably this was the reason why my Appeal was converted into a Motion. However, it is not clear why the Motion referred to Procedural Order No. 1, rather than No. 2 (which denied submission of the evidence).

Section 4 of the Rules covers Procedural Orders, and it states (in part) that:

4.03 The Board may at any time amend any procedural order.

The Board's Oct 5 Motion that was prepared on my behalf did not actually define a motion. For the record my intent was to propose that article 1 of Procedural Order No 2 should be deleted. Whether that constitutes a Motion or an Appeal is a matter of legal terminology.

In presenting its reasons for issuing Procedural Order No. 2 the Board stated:

The OEB will not accept Mr. Tolmie's proposed evidence in this proceeding because it is out of scope in the context of the issues to be considered.

The Board's list of issues is very clear, particularly with respect to Issue No. 1 - the need, costs and benefits of the proposed project. The evidence that I would like to submit is completely germane to those questions and if heard I believe that it will demonstrate that the NEXUS project is not needed, is not cost-effective from the public's point of view, and its drawbacks outweigh any benefits.

The Board's explanation suggests that the consideration of an alternative to the NEXUS pipeline falls outside of the Board's mandate:

The OEB finds that Mr. Tolmie's issues relate largely to broader questions of the future of electricity supply and demand in Ontario and hence are policy matters beyond the OEB's mandate in the context of the particular applications before it in this proceeding.

Natural gas is used for both power generation and for space heating in Ontario. There would be no need of the pipeline if it was not used for those applications so the adequacy of the supply and demand for both of the principal services cannot be separated from the question of whether or not we need this pipeline.

The NEXUS advocates are asking the OEB to redefine the government's policy. They want a very long term approval (past 2032) for the right to use a very large pipeline at 100% of its capacity over that period, and to convey a new fuel to Ontario. Shale gas is very different from the gas that Ontario is primarily relying on now (because of the fracking process and the delayed methane emissions) so what they are asking for should indeed be subject to a review by other agencies that will consider these upstream emissions (which are commonly not included in the government's GHG emission estimates). The project imposes additional costs and risks that also need to be evaluated. The NEXUS pipeline would approximately double the capacity for delivery of natural gas to Ontario. That appears to contravene the Ontario government's policies with respect to the use of fossil fuels.

Hopefully at least one of the intervenors will have questions or comments, whether they be positive or negative, that would at least open up an opportunity to explain why the proposed evidence is relevant to this hearing. Note that the deadline is Oct 13.

Thanks in advance,

Ron Tolmie
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