

Introduction

Enbridge Gas Inc. (EGI) has applied for the Board's approval under section 101 of the OEB Act for:

- a. an order granting Enbridge Gas authorization to, within the County Road 46 right of way, construct a work upon, under or over a highway, utility line or ditch at a depth of cover of approximately 1 metre and otherwise in accordance with Enbridge Gas's standards and procedure as typically shown in Exhibit B, Tab 1, Schedule 1, Attachment 2; including abandoning the existing pipeline in-place; or
- b. In the alternative to a), an order, pursuant to section 101 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c-15, Schedule B and Condition 4 of the Decision and Order in the Leave to Construct Application, direction and authorization, in whole or in part, to:
 - i. construct a work upon, under or over a highway, utility line or ditch at a depth of cover of approximately 1.5 metres and otherwise in accordance with CSA Z662 and Enbridge Gas's construction policies and standards; and/or
 - ii. Removal and remediation of approximately 21.8 kms of NPS 10 steel existing steel main.

The following are the submissions of the Federation of Rental-housing Providers of Ontario (FRPO) on the relief requested by EGI in its dispute with Essex County (Essex or the County).

FRPO is Concerned that there are No Community Winners in this Dispute

FRPO was involved in the original Windsor Line proceeding¹ raising concerns regarding the sizing and capacity of the pipeline regarded in the long-term economic benefit of the area and Ontario. We were concerned to learn that in spite of the significant proceeding associated with the Leave-to-Construct Application (LTC), there was no information provided regarding the on-going dispute of location and depth of the pipeline with the municipality. While EGI has pointed out that Essex did not participate in its LTC², in our view, the onus should be on the utility to advise the Board of any material concerns that may impact the cost, timing and viability of the project.

In any event, at this current juncture, EGI has asked the Board to either trump the Essex's requested conditions or provide EGI with assurance on recovery of additional costs associated with meeting those conditions. In essence, choosing a winner between staff of Essex or staff of EGI resulting in the potential losers being taxpayers of Essex or

¹ EB-2019-0172

² EGI AIC 20200922, page 2, para 6

ratepayers of EGI. This request is being made under Section 101 of the OEB Act appealing to the Board to arbitrate this dispute in the public interest.

Public Interest is Challenging when Needs and Costs are Uncertain

The test of the public interest often comes down to the balancing and prioritization of a number of societal benefits and risks. In this matter, what is uncertain is the need and benefit to the community of widening the road and potential impact to location of the pipe at the depth determined. While opinions have been provided from either side, what is known is that future impacts are uncertain as are the cost consequences of a road expansion. The parties who are best equipped to negotiate a selection of the running line are the representatives of the municipality and the utility.

In our view, the best opportunity to create a shared purpose in the selection of running line and depth in a road allowance is to create an alignment of interests between the municipality and the utility. It is for these types of situations that the gas utilities worked with municipal representatives to create the Model Franchise Agreement³. It is interesting to note that while this type of agreement has been around for a couple of decades, the franchise agreement currently enforce in this matter is from 1957.

In our view, the record of this proceeding evidences late deliverables, miscommunications, and entrenchment of positions. Believing in the best outcome would be a negotiated solution, FRPO and other parties advanced the benefits of a settlement conference. Absent negotiation, the Board is being asked to arbitrate.

Evidence and Process Favours Applicant

In making application to the Board, EGI appeals to its regulator to fight this battle in a forum in which it is most comfortable. EGI's ability to lead evidence allows for its positions to be uncontested. As an example, EGI provided its estimated cost of the additional depth.⁴ Then in its argument-in-chief, EGI points out that "No intervenor has provided evidence nor credibly challenged this estimate".⁵ A similar approach was taken with incremental abandonment costs.⁶ Clearly, no party to the proceeding would have the wherewithal to challenge these estimates so that they stand uncontested.

³ <https://www.oeb.ca/sites/default/files/uploads/documents/regulatorycodes/2019-01/model-franchise-agreement-20030911.pdf>

⁴ Exhibit B, Tab 1, Schedule 4

⁵ EGI AIC 20200922, page 19, para. 83

⁶ EGI AIC 20200922, page 22, paras. 92-93

Having reviewed the record, while we are impressed with the County's substantial evidentiary record on the chronology of the dispute, there is little for the Board to rule in favour of the County thus imposing additional costs on ratepayers.

Additional Depth

The County has provided that its plans this section of road are not advanced sufficiently to provide detail.⁷ Therefore without the nature, timing and scope of the expansion, the impact on the pipe cannot be known. It would be hard to justify the costs of additional depth.

Abandonment - Removal

The County has not provided any specific need which drives the need to remove the pipe at this time. In fact, the County has only expressed concern that it takes up a corridor in a crowded right of way.⁸ EGI has acknowledged that with the existing franchise agreement, Essex maintains the right to request removal if there is a specific need⁹. In our view, these factors weigh in favour of not incurring the cost and environmental impact unless there is a specific need. If that time comes, the County can exercise that right.

Therefore, on both of the issues, FRPO supports the applicant's views and requested relief in using the Section 101 powers to confirm EGI's planned approach from the LTC proceeding.

Decision Could Create Precedent

FRPO's involvement in the Windsor Line proceedings leaves a concern with the handling of this issue by EGI. We understand that disputes occur when parties are representing different interests. However, the duration of this dispute ought to have allowed EGI to make the Board aware of potential impacts on the project in the LTC proceeding. While we support the relief sought, we would respectfully submit that the Board ought to make clear their expectations in the utility's role in respecting stakeholders including the County and ratepayers and reinforce that this approval, if granted, is on an exception basis.

⁷ County of Essex_IRR_EGI_20200821 Q#26

⁸ County of Essex_IRR_EGI_20200821 Q#21 c)

⁹ EGI AIC 20200922, pages 22-23, paras. 96-99

In our view, if the Board approves application allowing the pipe to be installed at the proposed 1.0m cover, there is an element of balancing of risks. If there is an expansion in say, 10 years, the pipe would not be fully depreciated but would need to be abandoned. In the current regulatory construct, our understanding is the utility would need to write down its rate base to recognize the pipe abandonment which would be a risk to the company. We request that EGI provide the Board with its view on the accounting and ratemaking of this eventuality in its reply submissions.

Very importantly, the vintage of the franchise agreement creates risks for ratepayers that, in the above scenario, a new pipe would once again be constructed with ratepayers bearing the costs of that pipe. Having an updated agreement such as a model franchise agreement would assist in aligning the municipal and utility interests in working together to reduce costs for the taxpayers and ratepayers. We would respectfully request the Board consider the utilities role in ensuring parties interests are aligned in the public interest.

Conclusion

FRPO supports EGI in the relief sought to install the Windsor Line Replacement consistent with the approval in the LTC proceeding by using the Section 101 authority on an exception basis while communicating its expectations for EGI's role in managing its obligations to stakeholders.

All of Which is Respectfully Submitted on Behalf of FRPO,

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