



Ontario
Energy
Board | Commission
de l'énergie
de l'Ontario

DECISION AND ORDER

EB-2020-0284

BRUCE POWER L.P.

**Application for an Order Granting an Exemption from the
Requirement to Obtain Leave to Construct a hydrocarbon line and
ancillary facilities in the Municipality of Kincardine**

BEFORE: Emad Elsayed
Presiding Commissioner

December 17, 2020

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1 INTRODUCTION AND SUMMARY

On November 25, 2020, Bruce Power L.P. (Bruce Power) applied to the Ontario Energy Board (OEB) under Section 95 of the *Ontario Energy Board Act, 1998* (OEB Act) for an order granting an exemption from the requirement of section 90(1) of the OEB Act to obtain leave to construct (LTC) a hydrocarbon line and ancillary facilities in the Municipality of Kincardine.

Bruce Power is proposing to connect ancillary buildings on the Bruce Nuclear Power Development (BNPD) site near Kincardine, Ontario to EPCOR Natural Gas L.P.'s (ENGLP) new gas distribution system that is currently under construction in the area. To achieve this, Bruce Power plans to construct approximately 2.4 km of nominal pipe size (NPS) 6 inch hydrocarbon natural gas pipeline and two short NPS 2 inch lateral connections (the Project). Natural gas is to be used for heating the buildings on the site and will have no impact on the operation of, or be physically connected to, the nuclear power generation stations on the site.

Bruce Power stated that the Project cost is expected to exceed the \$2 million threshold set by Regulation¹ for LTC approval requirement. Bruce Power stated that but for the Project cost, the proposed pipeline does not exceed the length, pipe size or pressure thresholds beyond which LTC approval is required.

Bruce Power indicated that if the OEB concludes that an exemption should not apply in the circumstances of the proposed pipeline, then, in the alternative, it requests that the OEB consider its application as one for LTC under subsection 90(1) and, in that case, proceed to consider and determine the application without a hearing, pursuant to section 21(4) of the OEB Act.

Bruce Power requested an expedited review of its application stating that it plans to commence construction over the winter beginning on December 20, 2020. On December 16, 2020, Bruce Power filed a letter advising that it has decided to delay the start of pipeline construction to the spring of 2021. Bruce Power indicated that it is currently working with its Project contractor, EPCOR Commercial Services (EPCOR CS), an affiliate of ENGLP and ENGLP to finalize information on the new construction schedule and associated updated projected cost for the Project. Bruce Power stated that it will provide a further update to the OEB once this information is available.

¹ Ontario Regulation 328/03, section 3.

The OEB grants Bruce Power leave to construct the pipeline without a hearing pursuant to section 21(4)(b) of the OEB Act. The OEB finds that no person will be adversely affected in any material way by its granting of leave to construct the Project. The OEB's approval is conditional on Bruce Power adhering to the conditions of approval as set out in Schedule A of this Decision and Order.

2 THE APPLICATION

The Proposed Project

The Project consists of the construction of 2.4 km of nominal pipe size (NPS) 6 inch hydrocarbon natural gas pipeline with an operating pressure of approximately 414 kilopascals, and two short NPS 2 inch lateral connections (30 meters and 135 meters).

The NPS 6 inch steel pipeline will connect to an ENGLP owned measurement and regulating station located at the north west corner of the intersection of the central services road running through the BNPD site and the municipal Tie Road running past the site. The proposed pipelines are to be constructed underground and operated entirely on the BNPD site, alongside the central services roadway through the site and alongside an existing utility corridor.

The NPS 2 inch lateral connections will run from the main pipeline to connect two existing Bruce Power ancillary buildings on the BNPD site; a central storage facility containing radiological tooling and a site services building. Three curb valve tee connections will be included for future NPS 2 inch laterals to serve three additional Bruce Power ancillary buildings on the site.

The application states that EPCOR CS is being contracted to construct and operate the proposed pipeline. EPCOR CS will in turn contract AECON in support of the project. (AECON is also contracted on ENGLP's South Bruce gas distribution system build out.)

Bruce Power states that through its agreement with EPCOR CS, it will require that EPCOR CS adhere to all technical design, construction and operating requirements for hydrocarbon pipelines in constructing and operating the proposed pipeline, including design, construction and operation of the pipeline in compliance with O. Reg 210/01 *Oil and Gas Pipeline Systems*, under which Bruce Power will be the licenced fuel distributor.

Project Cost

According to the application, the cost of the Project is expected to be \$2.9 million. The entire cost of the Project will be paid by Bruce Power, and there will be no recovery of these costs from ENGLP's other customers. In the letter filed on December 16, 2020, Bruce Power indicated that it will provide an updated projected cost for the pipeline once this information is available, but that it was expected that the cost of the Project would remain above \$2 million. Irrespective of the exact cost of the Project, none of those costs will be paid by ENGLP's ratepayers (other than Bruce Power).

Landowner and Indigenous Impacts

Bruce Power, Ontario Power Generation (OPG), Hydro One and Canadian Nuclear Laboratories (CNL) are joint occupants of the BNPD site. Bruce Power states that these parties have been involved in planning for the proposed pipeline, and no other landowners will be impacted by the proposed pipeline.

OPG is the owner of the land leased to Bruce Power on which the pipeline will be constructed. Bruce Power states that OPG has expressed no concerns regarding the proposed pipeline, subject to completion of the safety assessment and validation thereby of no incremental risk beyond OPG's current safety case.

Hydro One holds an easement from OPG across portions of the BNPD site and owns and operates transmission facilities which supply the BNPD site and connect Bruce Power's generation facilities to the provincial electricity grid. Hydro One's easement runs generally alongside the main service road at the site, and the route for the proposed pipeline generally runs alongside the Hydro One easement. The planned route for the Project crosses the Hydro One easement in two places. Bruce Power states that it has been working with Hydro One to formalize the rights supporting those crossings and to ensure that the portions of the proposed pipeline crossing Hydro One's easement and passing under Hydro One's on site facilities are appropriately located and cathodically protected so as not to interfere with Hydro One's operations. According to the application, Hydro One has expressed no concerns regarding the proposed pipeline.

CNL manages the decommissioning phase of the Douglas Point Nuclear Generating Station which is located on the BNPD. Bruce Power has included CNL's required probabilistic safety assessment with Bruce Power's own safety assessment to confirm no incremental risk to CNL's operations posed by the Project. Bruce Power states that CNL has expressed no concerns regarding the proposed pipeline.

The three Indigenous communities with whom Bruce Power is in constant contact and coordination with are the Saugeen Ojibway Nation, the Historic Saugeen Métis and the Métis Nation of Ontario. Bruce Power states that these three communities have been advised of the proposed pipeline and have received a presentation detailing the Project. Bruce Power states that none of the communities have raised any concerns regarding the proposed pipeline.

Environmental Impact

Bruce Power asserts that its environmental screening has indicated no material environmental impact from the proposed pipeline. Bruce Power states that all project work at the BNPD site requires consideration and completion of an Environmental Impact Worksheet (EIW) due diligence process that has confirmed no-species at risk and no trees to be removed as a result of the proposed pipeline.

Bruce Power comments that the proposed pipeline route lies along an existing utility corridor already disturbed and will not impinge on any of the previously identified culturally sensitive areas.

Rate Impact

Bruce Power is not rate regulated and asserts that construction of the proposed pipeline will have no negative impacts on any other ratepayer. Bruce Power further notes that the proposed pipeline will reduce its operating costs as well as contribute to ENGLP's regulated gas distribution revenue, at no cost to ENGLP's existing and planned distribution customers, and as such is in the public interest.

3 THE DECISION

The OEB grants LTC without a hearing pursuant to section 21(4)(b) of the OEB Act. The OEB will not consider the application under section 95 of the OEB Act. The OEB's reasoning is provided as follows.

Section 90 of the OEB Act provides the following:

- 90.(1) No person shall construct a hydrocarbon line without first obtaining from the Board an order granting leave to construct the hydrocarbon line if,
- (a) The proposed hydrocarbon line is more than 20 kilometres in length
 - (b) The proposed hydrocarbon line is projected to cost most than the amount prescribed by the regulations²
 - (c) Any part of the proposed hydrocarbon line,
 - i. Uses pipe that has a nominal pipe size of 12 inches or more, and
 - ii. Has an operating pressure of 2,000 kilopascals or more, or
 - (d) Criteria prescribed by the regulations are met. 2003, c. 3, s. 63 (1).

The application sets out that the projected cost of the Project is \$2.9 million which exceeds the \$2 million threshold set by regulation³ and therefore requires approval under section 90(1) of the OEB Act. In the letter filed on December 16, 2020, Bruce Power indicated that it will provide the updated projected cost for the pipeline which it expects will remain above the \$2 million leave to construct threshold.

Bruce Power has, however, applied under section 95 of the OEB Act for an exemption from the requirements of section 90(1) of the OEB Act, stating that but for the Project cost, the proposed pipeline does not exceed the length, pipe size or pressure thresholds beyond which LTC is required.

Section 95 of the OEB Act provides that “the Board may, if in its opinion special circumstances of a particular case so require, exempt any person from the requirements of section 90 or 92 without a hearing”.

Bruce Power seeks an exemption under section 95 of the OEB Act on the basis of special circumstances associated with construction on a Canadian Nuclear Safety Commission (CNSC) regulated nuclear operations site.

² Ontario Reg. 328/03 states in section 3, “The amount for the projected cost of a proposed hydrocarbon line for the purposes of clause 90(1)(b) of the Act is \$2 million.”

³ Ontario Reg. 328/03, section 3

Bruce Power sets out several factors that constitute these special circumstances including: (i) the conversion of the proposal from an overground to an underground pipeline in response to safety parameters raised by other parties that share the BNPD site; (ii) changes to the proposed route to accommodate extensive existing facilities on the BNPD, and (iii) the completion of probabilistic safety assessments to address CNSC licencing requirements for Bruce Power, OPG and CNL operations on the BNPD site.

Bruce Power submits that these circumstances have driven incremental costs triggering a LTC requirement as the projected cost of the Project exceeds the threshold set by the regulation⁴.

In its application, Bruce Power indicates that if the OEB concludes that an exemption should not apply in the circumstances of the proposed pipeline, then, in the alternative, it requests that the OEB consider its application as one for LTC under subsection 90(1) and, in that case, proceed to consider and determine the application without a hearing, pursuant to section 21(4) of the OEB Act.

The OEB does not consider that the circumstances of this case, as described by Bruce Power, constitute special circumstances pursuant to section 95 of the Act. The fact that a particular site may present a challenging regulatory environment that increases the costs of a project does not on its own constitute special circumstances. There would be numerous cases in which a project might traverse an area that imposes additional regulatory controls or requirements – for example an environmentally sensitive area - that could increase costs and thereby trigger the requirement for a LTC approval. These are not special circumstances.

The OEB will, however, approve the Project without a hearing pursuant to section 21(4)(b) of the OEB Act. Section 21(4)(b) states that the OEB can dispose of a proceeding without a hearing where “the Board determines that no person, other than the applicant, appellant or licence holder will be adversely affected in a material way by the outcome of the proceeding and the applicant, appellant or licence holder has consented to disposing of a proceeding without a hearing.” The OEB reviewed the application and has determined that the Project is in the public interest and that no person (including the applicant) will be adversely impacted in a material way by this approval.

The OEB notes that much of the evidence provided by Bruce Power relates to matters such as project cost/economics, the impact on the ratepayers, the environmental

⁴ Ontario Regulation 328/03, section 3.

impact, the impact on landowners, and the pipeline design technical requirements, all of which the OEB typically examines in a LTC application. Bruce Power has made submissions on each of these matters in its application, stating that there will be no negative impacts associated with the Project.

Section 96 of the OEB Act provides that the OEB shall grant approval for leave to construct if it finds that “the construction, expansion or reinforcement of the proposed work is in the public interest”. When determining whether a project is in the public interest, the OEB’s examination includes the need for the project and the alternatives, the economics, the impact on the ratepayers, the environmental impact, the impact on landowners, and the pipeline design technical requirements. The OEB finds it appropriate to also assess these criteria in determining whether, pursuant to section 21(4)(b), any person will be adversely materially affected by the outcome of this proceeding. Specifically, in this case, the OEB has considered the following:

- ratepayer impacts
- landowner impacts
- impacts on the rights of Indigenous groups
- environmental impacts
- technical design, construction and operating requirements

Ratepayer Impacts

With respect to ratepayer impact, as noted in the application, Bruce Power is not rate regulated and, therefore, construction of the pipeline will have no negative impact on ratepayers (other than the applicant) from a cost perspective. The costs of the Project will not form part of ENGLP’s rate base, and will not be passed on the ratepayers. The OEB finds that ratepayer impact is not a concern.

Impacts to Landowners and Indigenous communities

The Project will be located entirely on the BNPD site. In terms of landowner impact, Bruce Power has submitted that the other occupants of the site (OPG, Hydro One, CNL) have been involved in the planning process and have expressed no concerns other than OPG’s request that Bruce Power complete a safety assessment to demonstrate no incremental risks. The OEB notes that Bruce Power has committed to completing this assessment. The OEB also notes that Bruce Power has committed to continue working with Hydro One to ensure that its proposed facilities do not interfere with Hydro One’s

operations. Bruce Power confirmed that there will be no incremental risk to CNL's operations posed by the proposed pipeline. Bruce Power also confirmed that local Indigenous communities have been advised of the Project and have raised no concerns and has committed to continue to update them. Based on this information, the OEB finds that no parties with a direct interest in the lands upon which the Project will be situated will be adversely impacted in a material way by the OEB's approval. The OEB also finds that no other landowners or rights holders are expected to be impacted by the Project.

Environmental Impacts

Bruce Power submitted that its environmental screening has indicated no material environmental impact from the proposed pipeline which included the completion of an EIW confirming no-species at risk and no trees to be removed as a result of the proposed pipeline. Bruce Power also submitted that the proposed pipeline route lies along an existing utility corridor already disturbed and will not impinge on any of the previously identified culturally sensitive areas. Given this information, the OEB concludes that there are no adverse material environmental impacts that arise from the Project.

Technical design, construction and operating requirements

Bruce Power stated that through its agreement with EPCOR CS, it will require that EPCOR CS adhere to all technical design, construction and operating requirements for hydrocarbon pipelines in constructing and operating the proposed pipeline, including design, construction and operation of the pipeline in compliance with O. Reg 210/01 *Oil and Gas Pipeline Systems*, under which Bruce Power will be the licenced fuel distributor. The OEB accepts the Bruce Power's undertaking to meet the technical requirements and therefore has no concern that any person will be adversely materially impacted by the pipeline's design or construction standards, or in its operation.

Conclusion

For all of the above reasons, the OEB finds that no person will be adversely materially impacted by the OEB's approval of the Project. The OEB also finds that the Project will provide benefits to Bruce Power through lower energy costs, and potentially to ENGLP and its customers by adding a new customer to contribute to certain common costs through their rates. The OEB finds that the Project is in the public interest and that it is appropriate to grant leave to construct without a hearing pursuant to section 21(4)(b), section 90(1) and section 96 of the OEB Act.

In its application, Bruce Power has made a number of commitments and representations with respect to the construction of the Project. Section 23 of the OEB Act permits the OEB, when making an order, to impose conditions of approval as it considers appropriate. The OEB has determined that its approval is conditional on Bruce Power's adherence to the conditions of approval as set out in Schedule A of this Decision and Order, which includes the commitments and representations contained in Bruce Power's application.

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Bruce Power L.P. is granted leave, pursuant to section 90(1) and section 21(4)(b) of the OEB Act, to construct 2.4 km of nominal pipe size (NPS) 6 inch hydrocarbon natural gas pipeline and two short NPS 2 inch lateral connections in the Municipality of Kincardine, as described in the application, without a hearing.
2. This authorization for leave to construct is conditional on Bruce Power L.P. adhering to the conditions of approval set out in Schedule A.
3. Bruce Power L.P. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto December 17, 2020

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar

SCHEDULE A – CONDITIONS OF APPROVAL

DECISION AND ORDER

BRUCE POWER L.P.

EB-2020-0284

December 17, 2020

CONDITIONS OF APPROVAL

Bruce Power L.P.

EB-2020-0284

1. Bruce Power L.P. (Bruce Power) shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2020-0284 and these Conditions of Approval.
2. Bruce Power shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project.
3. Bruce Power shall complete a safety assessment to demonstrate no incremental risks from the Project as agreed with Ontario Power Generation.
4. Bruce Power shall ensure adherence to all technical design, construction and operating requirements in constructing and operating the proposed pipeline in compliance with O. Reg 210/01 *Oil and Gas Pipeline Systems*.
5. OEB approval is based on the proposed pipeline route. Bruce Power shall seek approval from the OEB for any changes to the proposed route
6. Bruce Power shall provide an update to the OEB once the revised Project cost estimate and schedule are confirmed.
7. Bruce Power is expected to regularly update the site occupants and the Indigenous communities about the Project progress.
8. Bruce Power shall designate one of its employees as project manager who will be the point of contact for these conditions, and shall provide the employee's name and contact information to the OEB and to all affected landowners, and shall clearly post the project manager's contact information in a prominent place at the construction site.