

DR QUINN & ASSOCIATES LTD.

VIA E-MAIL

January 8, 2021

Ontario Energy Board
Attn: OEB Registrar
P.O. Box 2319
27th Floor, 2300 Yonge Street
Toronto ON M4P 1E4

**RE: EB-2020-0198 EGI NPS 20 Waterfront Relocation
FRPO Response to PO#3**

We are writing on behalf of the Federation of Rental-housing Providers of Ontario ("FRPO") in response to Procedural Order No. 3 on the question of Board jurisdiction to order the costs of relocation of the pipe in question to Waterfront Toronto.

We have reviewed the submissions on jurisdiction of EGI and Waterfront Toronto. We have also benefited from a robust exchange of perspectives from our ratepayer representative colleagues in preparing for submissions. Not having a legal background to draw on, we appreciate that legal argument will be well handled by ratepayer groups. Out of respect for the experienced opinions of our colleagues, we will not attempt to support one over another as we respect that the Board will ultimately decide the weight to apply to their respective submissions. Instead, we offer some specific concerns for the Board's consideration in determining this issue and the next procedural steps with respect to this application.

EGI Shareholder Benefits from EGI Losing this Dispute

EGI has requested Leave to Construct to remove a small section of NPS 20 HP Steel Line and replace it with a considerably larger section in downtown Toronto. The initial driver for a review of replacement alternatives seems to have been precipitated to accommodate work undertaken by the Waterfront Toronto's Port Lands Flood Protection and Enabling Infrastructure Project (PLFPEI). As such, EGI set out to recover the cost of the relocation from Waterfront Toronto.

Whether the Board has jurisdiction to determine cost responsibility for the Proposed Pipeline, including allocation of costs to Waterfront Toronto, is the issue on which the Board is inviting submissions prior to determination. FRPO, along with other ratepayer groups, recognize that if the determination is that the Board lacks authority to assess cost responsibility to Waterfront Toronto and the pipe needs to be moved, EGI will likely be seeking recovery from ratepayers for their estimated \$70 million proposed replacement. In the event the Board approves recovery from ratepayers, EGI shareholders will benefit from the additional recovery of return on the amount spent as opposed to just recovering that amount from Waterfront Toronto.

In reviewing EGI's submission, we hoped that the argument would be very persuasive in protecting ratepayers from unwarranted cost. Instead, EGI's argument for the authority of the Board to determine cost responsibility meanders through some recent Board and court precedents and legislation without highlighting its fundamental premise. While some of the points that they have offered may be persuasive to the Board, one part of their argument goes so far as to rely the Company's response to a Board staff inquiry not being challenged by any party and presumptively accepted by the Board¹. Even a non-lawyer could see that this type of premise is untenable.

Further, EGI's argument does omit an especially important legal matter: The Company's right to have the existing pipe on the bridge has been terminated. As provided by Waterfront Toronto's submissions, the permit to be on the bridge has been revoked. This termination was provided in writing on October 30th but the written communication followed previous correspondence and communication earlier in the summer². But EGI does not even mention this fact in its submissions on the issue of cost responsibility nor address the potential eventuality in its evidence. While evidentiary omission could be attributed to timing and certainty, in our view, the termination of the right ought to be a fact that the applicant would have responsibility to bring to the Board's attention as it may be determinative for the issue of cost responsibility.

Evidence Does Not Provide Sufficient Basis for Assessment of Prudence

In its introduction, EGI states that there are only 3 potential groups or parties that could bear responsibility for paying the relocation. The third group is EGI shareholders under the condition that the expenditures are not prudent. In our view, the evidence falls short of information that would meet an applicant's onus to demonstrate that the proposed approach is prudent especially in considering if this project is a replacement or an enhancement of capacity.

In recent replacement cases, EGI has presented evidence which includes that their proposed approach is "like for like"³ and equivalent replacement capacity⁴. This application makes no such claim. The evidence does not even provide an assessment of the capacity provided by alternatives in evidence in both the Windsor Line and London Lines replacement projects. While we may not have legal background, our engineering and utility background tells us that

¹ EGI_SUB_NPS_20_Waterfront_20201217 pages 5-6 referencing EB-2014-0116

² Waterfront Toronto_Intvnr request_20201130, Attachment

³ EB-2019-0172 - Enbridge Gas Inc. ("Enbridge Gas") – Windsor Line Replacement Project Leave to Construct ("LTC") Application – Response to FRPO and Energy Probe Submissions stated: Enbridge Gas re-iterated in its pre-filed evidence¹ that the NPS 6 is the most suitable option because it is a "like-for-like" replacement with the existing NPS 10 pipeline in terms of capacity.

⁴ EB-2020-0192 London Lines Replacement, Exhibit B, Tab 2, Schedule 2, Page 14

the proposed replacement increases the capacity to that section of EGI's downtown, Lakeshore and Portlands system. Without better information, we can quantify the incremental capacity benefit. We would have expected the issue of capacity would have been evidenced and most certainly included in the assessment of alternatives.

Instead of the more informative alternative assessment of the referenced replacement cases, a narrative description is provided of alternatives and the risks and other reasons why that alternative is not effective. No information is provided about the current or resulting capacity of the system.

Further, from the alternative descriptions, it is not even clear if the Utility Corridor that Toronto Hydro is using is amongst the options considered by EGI⁵. While we respect there are different infrastructure needs to protect pipelines and wires, EGI ought to provide specific clarification on its reasons to dismiss the offered corridor.

Given these deficiencies, if cost responsibility is ultimately assessed on the issue of prudence, more information is needed that may not be clarified through a single round of interrogatories given the pre-filed evidence. With time being of the essence, we would encourage the Board to allow opportunity for effective discovery for efficiency in resolving these matters.

Respectfully Submitted on Behalf of FRPO,

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c. J. Denomy, EGI Regulatory Proceedings – EGI
L. Djurdjevic, R. Murray – Board Staff
Parties to EB-2020-0198

⁵ EGI_SUB_NPS_20_Waterfront_20201217, Attachment 1