

ONTARIO ENERGY BOARD

EB-2022-0111

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S. O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF a motion to review OEB Decision for Leave to Construct Bobcaygeon Community Expansion Project

Notice of Motion

**Review & Vary the Leave to Construct Approval
For the Reinforcement Pipeline**

May 27, 2024

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NOTICE OF MOTION

The Federation of Rental-housing Providers of Ontario (FRPO) will make a motion to the OEB on a date and through a method of hearing to be determined by the OEB.

THE MOTION IS FOR:

- 1) A review and variance of the portion of the Decision dated May 14, 2024 approving the Reinforcement pipeline.
- 2) An Order that the Motion raises issues material enough to warrant a review of the Leave-to-Construct (LTC) Decision on the merits thus satisfying the “threshold test” in Rule 43.01 of the OEB’s *Rules of Practice and Procedure* in relation to approving the Reinforcement pipeline.
- 3) In the alternative to 1), that a stay be invoked on the portion of the Decision relating to the Reinforcement pipeline, allowing time for a Technical Conference and other procedural steps the Board believes are warranted to make a fully informed decision on the need and timing of the Reinforcement pipeline.

THE GROUNDS FOR THE MOTION ARE:

THE APPLICATION

1. Enbridge Gas Inc. (Enbridge Gas) filed an application with the Ontario Energy Board (OEB) under section 90 of the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, (Schedule B) (OEB Act), for an order granting leave to construct (LTC) approximately 36 kilometres of natural gas pipeline in the City of Kawartha Lakes (including Bobcaygeon) and Township of Cavan-Monaghan.¹
2. The proposed natural gas pipelines (Project) consist of:
 - A Supply Lateral:
 - 25 kilometres of Nominal Pipe Size (NPS) 6-inch extra high pressure steel distribution pipeline
 - 2 kilometres of NPS 6-inch high pressure polyethylene distribution pipeline
 - 1 kilometre of NPS 6-inch high pressure steel distribution pipeline
 - A Reinforcement Pipeline:
 - 8 kilometres of NPS 6-inch extra high pressure steel distribution pipeline
3. According to Enbridge Gas, the Project is needed to supply natural gas to approximately 3,700 new customers who currently do not have access to natural gas service. The Application requests LTC for construction of Reinforcement pipeline in the spring and summer of 2026. At the end of 2026, EGI forecasts less than 25% of the total Projected Customer Additions.²

¹ EGI_APPL_Bobcaygeon_LTC_Updated_20230614, Exhibit A, Tab 2, Schedule 1, pages 1-3

² Exhibit B, Tab 1, Schedule 1, page 8, Table 2

THE PROCEEDING

4. Prior to the updated Project Application, EGI submitted an application to serve the area with a different scale and scope.³ In its intervention request,⁴ FRPO stated that “*the proposed plan warrants clarification and an examination of the proposed sizing of the project*” while submitting that the manner of hearing be decided after the initial round of discovery.
5. The proceeding underwent a period of abeyance resulting in an updated Project Application.⁵ Upon receipt of the updated application, after a more thorough review, FRPO advised the Board of its concerns that the application did not include the “*necessary evidence in defining the proposed piping systems and alternatives considered*”.⁶ EGI responded that FRPO “*does not provide sufficient information to describe the requested network analysis to substantiate the assertion that its omission is not compliant with the OEB’s Natural Gas Facilities Handbook*” and that “*FRPO can pose interrogatories with respect to network analysis and submitted that the processing of this application should not be delayed based on the submissions set out in FRPO’s correspondence*”. The Board’s procedural order stated: “*The OEB has reviewed the amended application and determined that it is complete and complies with the filing requirements set in the OEB Natural Gas Facilities Handbook. Therefore, the OEB will not require Enbridge Gas to file an update to its application. FRPO may use the interrogatory process to ask questions regarding network analysis*”.⁷
6. Upon reviewing the interrogatory responses, FRPO submitted: “*we believe our ability to assist the Board would be aided by a technical conference to understand better EGI’s approach to facilities and economics for this project. If this matter is to proceed to a written hearing at this juncture, our ability to assist the Board would be severely limited.*”⁸ The Board determined that the proceeding would move directly to written submissions as “*A technical conference and/or oral hearing would have limited probative value given the opportunity for discovery through the interrogatory process.*”⁹
7. In its final submissions, FRPO provided a publicly available mathematical calculation of pressure drop showing the sufficiency of only the NPS Supply 6 Line to meet the 10-yr forecast demands identified by Enbridge Gas Inc (EGI). Given these facts, FRPO urged the Board not to approve the Reinforcement pipeline or alternatively, defer approving the Reinforcement pipeline until after more discovery.¹⁰ In its decision (the “LTC”), the Board approved both the Supply and Reinforcement pipelines stating: “*Finally, with*

³ Redacted_EGI_Appl_Bobcaygeon_PP_updated_corrected_20220516

⁴ FRPO_INTRV_REQ_KAWARTHA_20220622

⁵ EGI_APPL_Bobcaygeon_LTC_Updated_20230614

⁶ FRPO_REQ_EGI_COMPLETE_EVID_KAWARTHA_20230703

⁷ PO1_EGI_Bobcaygeon_Community_Expansion_LTC_20230814_eSigned

⁸ FRPO_EGI_LTC_KAWARTHA_FRPO_REQ_TECH_CONF_20230923

⁹ Decision_Procedural_Order_2_EGI_Bobcaygeon_NGEP_LTC_appn_20240220

¹⁰ FRPO_SUB_EGI_NGEP_BOBCAYGEON_20240325

respect to the FRPO submission regarding the need for the reinforcement pipeline, the OEB has reviewed FRPO's concerns and is satisfied that the **supply lateral and the reinforcement pipeline** as proposed by Enbridge Gas **are the minimum size required to meet demand.**"¹¹ (**emphasis added**)

THE GROUNDS OF THE MOTION ARE:

8. The requirements for a notice of motion to review are set out in Rule 42.01 of the *OEB Rules of Practice and Procedure* (the "Rules") and are addressed below.

The Board erred in stating that the Reinforcement pipeline is part of minimum requirements

9. The Board decision states the Reinforcement pipeline is included in the **minimum requirements** to meet the demand.¹² This is not factually correct as it is a fact that the Reinforcement pipeline is not needed to meet the year 3 demands of the application. Further, if the Board is referring to the year 10 demands, the statement conflicts with the mathematical calculations that the Reinforcement pipe is not needed for the full forecast in year 10.¹³ The Board decision disregards this relevant fact which is an error of law. The evidentiary record is clear that EGI did not dispute nor contest the mathematical test of its proposed sizing.

The Board acted contrary to principles of natural justice and denying FRPO procedural fairness

10. From the outset, FRPO identified that the application did not include "*necessary evidence in defining the proposed piping systems and alternatives considered*".¹⁴ The Board's Natural Gas Facilities Handbook states:¹⁵

The applicant must demonstrate that the project is needed. Factors that give rise to the need may include such things as new customer demand, increased system capacity requirements, reliability of service, need for pipeline relocation, operational risks, or integrity issues. Evidence in support of the need may include such things as a customer or volumetric forecast, system capacity analysis, engineering reports, or Utility System Plan (including any Asset Management Plan).

11. The application provided a forecast of customer additions.¹⁶ However, there is no evidence provided regarding the demands of the customers especially for the commercial and industrial class. To understand if a pipe is properly sized to meet demand, one must know the amount of gas flow at peak times. For distribution pipes, the amount of gas required is measured in cubic meters (or cubic feet) per hour. The application does not

¹¹ dec_order_EGI_Bobcaygeon NGEP_20240514_eSigned, pg.16

¹² Ibid.

¹³ FRPO_SUB_EGI NGEP BOBCAYGEON_20240325

¹⁴ FRPO_REQ EGI COMPLETE EVID_KAWARTHA_20230703

¹⁵ OEB_Natural Gas Facilities Handbook_20220331, Section 4.4.1 Need for Project

¹⁶ Exhibit B, Tab 1, Schedule 1, page 8, Table 2

provide this information. It cannot be inferred from the customer attachment forecast as commercial and industrial customers' hourly demand varies based on size and utilization. The application did not provide the system capacity analysis nor any other report to establish the proper sizing of the proposed pipelines.

12. When the year 10 total flows on the pipeline were provided in response to our interrogatory,¹⁷ our concerns about appropriate sizing and timing were increased prompting our request for a Technical Conference.¹⁸

13. The Board's Natural Gas Facilities Handbook states:¹⁹

The applicant must demonstrate that the identified need is best addressed by the proposed project, having adequately considered all viable alternatives (including other pipeline solutions, non-pipeline solutions including integrated resource planning (IRP) alternatives discussed in further detail below, or any combinations thereof).

14. The prefiled evidence did not present alternative pipeline solutions relative to the timing of the Reinforcement pipeline. At the end of year 3, less than 25% of the forecasted customers would be taking service. Since our uncontested mathematical calculation demonstrated that the Reinforcement pipeline may not be needed with year 10 customer additions, the Supply pipeline would have more than sufficient capacity at year 3. The application provided no customer hourly demand data nor system capacity analysis to support the asserted need of Reinforcement at year 3.

15. The Board's denial of additional discovery steps on the Reinforcement pipeline inhibited ratepayers' opportunity to reconcile the FRPO-provided mathematical calculation with EGI's assertion of need in a case. Given that the cost consequences of the project will not be determined until the next rebasing case after the Rate Stability Period, ratepayers are at risk of being responsible for costs associated with a Reinforcement pipeline that was not necessary.

THE ERRORS ARE MATERIAL

16. The cost of the Reinforcement pipeline is approximately \$10 million.

FRPO's MOTION SATISFIES THE THRESHOLD TEST

17. Rule 43.01 of the OEB's Rules of Practice and Procedures states that "prior to proceeding to hear a motion under Rule 40.01 on its merits, the OEB may, with or without a hearing, consider a threshold question of whether the motion raises relevant issues material enough to warrant a review of the decision or order on the merits."

¹⁷ Exhibit I.FRPO.1

¹⁸ FRPO_EGI LTC KAWARTHA_FRPO REQ TECH CONF_20230923

¹⁹ OEB_Natural Gas Facilities Handbook_20220331, Section 4.4.2 Project Alternatives

18. The lack of evidentiary basis provided in determining the Reinforcement pipeline is required to meet minimum requirements and lack of procedural fairness in arriving at that determination raises material questions about the correctness of the decision. As such, FRPO satisfies the Rule's threshold test and the OEB should proceed to hear the Motion on its merits.
19. Should the OEB consider the threshold question, FRPO requests the opportunity to make written submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON BEHALF OF FRPO,

Dwayne R. Quinn
Principal
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