

**ONTARIO ENERGY BOARD**

**EB-2024-0186**

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

**AND IN THE MATTER OF** FRPO's Motion to review OEB Decision for Leave to Construct Bobcaygeon Community Expansion Project

---

**FRPO REPLY  
SUBMISSIONS**

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

---

September 26, 2024

**DR QUINN & ASSOCIATES LTD.**  
Tel.: (519) 500-1022  
drquinn@rogers.com

## INTRODUCTION

In accordance with Procedural Order No. 2 and the Amending Letter of September 18<sup>th</sup>, the Federation of Rental-housing Providers of Ontario (FRPO) provides, herein, Reply to submissions of Enbridge Gas Inc (EGI) and OEB Staff (Staff) on our Motion to Review and Vary the elements of the Bobcaygeon Decision (EB-2022-0111) pertaining to the Reinforcement pipeline.

Staff's submission included an Introduction<sup>1</sup> which outlines the chronology of the proceeding. Further, the submission assesses whether the Motions pass the threshold hold test in Rule 43.01 of the Board's Rules of Practice and Procedure concluding that *OEB staff submits that the motions pass the threshold.*<sup>2</sup> As this conclusion parallels our own outlined in the Motion,<sup>3</sup> we will focus our reply on the merits of the Motion.

In our respectful submission, there is no evidence that the reinforcement line is needed in 2026 and that the premature installation of the Reinforcement pipeline is not in the public interest. A finding that installing the Reinforcement pipeline in 2026 is an error in that there is no evidentiary basis for this conclusion. In addition, given our history of assisting the Board in natural gas technical matters as a ratepayer with standing, we respectfully submit that FRPO is owed Procedural Fairness and a legitimate expectation for procedural steps to allow us to make our case on behalf of our members and other ratepayers.

FRPO accepts Staff's conclusion on the qualification for a Stay and will not pursue the matter further.

## MERITS OF THE MOTION

### **There is No Evidence that the Reinforcement Line is Needed in 2026**

EGI's overview asserts: *No error in findings on reinforcement pipeline.*<sup>4</sup>

From the outset of the proceeding, FRPO articulated its concerns over the lack of technical information provided in the application.<sup>5</sup> As provided in our Notice of Motion,<sup>6</sup> to properly size a pipeline, one must have the expected volumetric flow required under peak conditions. Only the design day flow required at the end of the ten-year forecast period is on the record in this proceeding. That information only became

---

<sup>1</sup> OEB\_Staff\_Submission\_FRPO and ED Motions\_20240912, pg. 1-2

<sup>2</sup> Ibid. pg. 3

<sup>3</sup> FRPO\_MOTION\_EGI LTC BOBCAYGEON\_20240527, pg. 5

<sup>4</sup> EGI\_Submissions\_Motions\_20240912, pg. 2, para.2 c)

<sup>5</sup> FRPO\_REQ EGI COMPLETE EVID\_KAWARTHA\_20230703

<sup>6</sup> FRPO\_MOTION\_EGI LTC BOBCAYGEON\_20240527

available by way of interrogatory response.<sup>7</sup> There is no evidence of the forecasted design day volumetric requirement for the winter of 2026/27 or any interim winter period inside the ten-year forecast period.

It is impossible for any person including a decision-maker to establish a minimum pipe sizing for any interim period without this information. That is indisputable. There is no factual basis upon which to make a finding that:

*“The OEB considered the evidence on need and the pipe size and design of the Project, including the reinforcement line, and accepted Enbridge Gas’s evidence that the proposed pipelines were the minimum size required to meet demand”.*<sup>8</sup>

The Reinforcement pipeline could be deferred for 5, 7 or perhaps even 10 years as our pressure drop calculation showed.<sup>9</sup> That calculation was made from a publicly available source with conservative assumptions. EGI did not contest that calculation. How could EGI contest the result as our reference provided the link for anyone, including the company, to put in the same parameters to determine the Supply pipeline was sufficient for 10 years?

Respectfully, Board staff did not test the proposed sizing in the application. This omission is particularly notable in that staff:

- a) must have reviewed the application for completeness yet there was no flow information provided in the application;
- b) did not ask any interrogatories regarding design day flows to test the sizing of the proposed pipelines;
- c) stated that after reviewing the interrogatory response that further discovery through a technical conference would not be required.<sup>10</sup>

If staff is not testing or cannot test the sizing of the pipe and public information casts doubt on the sizing, how can the Board render the determination when the facts that one would need to rely upon are not available? If there is no evidence, how can it be weighed?

In past proceedings, the Board has relied upon FRPO’s technical expertise to alter or deny facility applications from EGI.<sup>11</sup> However, FRPO would need the opportunity to

---

<sup>7</sup> Exhibit I.FRPO.2 – FRPO.2 contains some of the base information ought to be part of the application as described in the Natural Gas Facilities Handbook

<sup>8</sup> dec\_order\_EGI\_Bobcaygeon\_NGEP\_20240514\_eSigned

<sup>9</sup> FRPO\_SUB\_EGI\_NGEP\_BOBCAYGEON\_20240325

<sup>10</sup> OEB Staff\_sub\_EGI\_tech\_conf\_20230922

<sup>11</sup> For example: EB-2019-0172 Windsor Line & EB-2020-0293

elicit better evidence to assist the Board.<sup>12</sup> FRPO's requests for more discovery were denied leaving our only recourse to submit a pressure drop calculation from a public source which demonstrated the lack of need for the Reinforcement pipeline.<sup>13</sup> Instead of addressing the issue, EGI feigned confusion to avoid responding to the discrepancy leaving the calculation uncontested.<sup>14</sup>

With no evidence to assess and contrary submissions to contest, we respectfully submit that the finding that the Reinforcement pipeline is required as proposed in 2026 for minimum sizing is an error of fact.

### **Premature Installation of Reinforcement Pipeline is Not in Public Interest**

EGI motion submissions rely heavily on the Government of Ontario's policy to expand natural gas to unserved communities.<sup>15</sup> We are not disputing that service to the Bobcaygeon community is aligned with the government's legislative direction and that is proper for the OEB to rely on that. We are, however, disputing that if the project can be heavily subsidized to reach a PI of 1 that the project is now considered "economic" and in the public interest.<sup>16</sup> Just because a subsidy is available, does not mean that options for a more cost-effective approach that would reduce the required subsidization should not be considered.

The Reinforcement pipeline's cost was estimated at about \$10M.<sup>17</sup> Deferring the installation of the Reinforcement pipeline until a time when design day flows grow to a level requiring additional supply would reduce the level of subsidy. This reduction would be greater if the requirement was determined not to exist in the ten-year forecast period. The determination of the point in time can be done by turning the customer forecast into design day flows to forecast when the Supply pipeline would need reinforcement. However, those steps were not taken with the denial of additional discovery in a technical conference. We respectfully submit that it is not too late to initiate a focused proceeding on this question to reduce the amount of NGEF funding required.

---

<sup>12</sup> FRPO\_REQ EGI COMPLETE EVID\_KAWARTHA\_20230703 & FRPO\_EGI LTC KAWARTHA\_FRPO REQ TECH CONF\_20230923

<sup>13</sup> FRPO\_SUB\_EGI NGEF BOBCAYGEON\_20240325

<sup>14</sup> FRPO\_CLARIFICATION\_EGI LTC BOBCAYGEON\_20240410

<sup>15</sup> EGI\_Submissions\_Motions\_20240912, pg. 2, para. 3

<sup>16</sup> Ibid, pg. 11, para 29

<sup>17</sup> Exhibit E, Tab 1, Schedule 1, page 1, Table 1

## **FRPO Members & Ratepayers Ought to be Afforded Procedural Fairness**

In our Notice of Motion, FRPO submitted that the Board acted contrary to the principles of natural justice in denying FRPO procedural fairness.<sup>18</sup> Both EGI and Board staff have submitted that is not the case. They do so, however, by:

- a) Conflating the issues, submissions and representations of Environmental Defence (ED) with those of FRPO and applying the same argument to drastically different circumstances.
- b) Ignoring multiple submissions by FRPO regarding the lack of evidence upon which to approve a pipeline design.

In addition, FRPO respectfully submits that it has legitimate expectation of the right to discovery essential to protect its members and Ontario ratepayer interests in a costly facilities application.

### a) FRPO's Position and its Motion Ought to Be Distinguished from ED's Motion

While the original application and proceeding, EB-2022-0111, are the same, the submissions and requests for relief of the Motions are very different between FRPO and ED. All due respect to ED, we will leave it to their representation to seek its organization's desired outcomes. Therefore, we will strive not to speak to the merits of their submissions with which both EGI and Board staff take issue.

Board staff's submission has numerous pages arguing against the positions submitted by ED then simply applies its logic to FRPO. As an example, Board staff submits:<sup>19</sup>

*The Panel's rejection of Environmental Defence's proposed evidence (and that of Ms. Carswell) and rejection of FRPO's request for a technical conference does not imply that their interests and concerns were unheard or rejected. The actual completion and formal submission of survey evidence was not crucial to Environmental Defence's case because it would merely confirm the concerns and issues that the Panel had already been made aware of and acknowledged through Environmental Defence's existing contributions in the proceedings. The same is true for FRPO's requested technical conference.*

With all due respect to ED's evidence, the provision of evidence on the efficacy of alternative energy systems for the Board's consideration in its decision-making in the public interest is not the same as whether there is evidence that proposed pipelines in

---

<sup>18</sup> FRPO\_MOTION\_EGI LTC BOBCAYGEON\_20240527, pg. 3-4

<sup>19</sup> OEB\_Staff\_Submission\_FRPO and ED Motions\_20240912, pg. 13

the application has been sufficiently justified as necessary. The generation of ED's own survey evidence and the Board's knowledge of that proposed evidence were not only a result of the record of this proceeding, but also, other facilities proceedings and a motion<sup>20</sup> already heard by the Board.

FRPO respectfully submits that this level of awareness and acknowledgement cannot be applied to FRPO's request to test the need for the Reinforcement pipeline in a requested technical conference as we had not yet submitted our publicly available pressure drop calculation. We believed the Board would want to rely on tested evidence in the application and sought to educe that in the technical conference. When faced with having to generate submissions without further discovery, FRPO did submit its version of the pressure drop calculation.

In its reply, EGI submitted the calculation should not be given any weight as they leveraged a typographic error into distorting the premise of our calculation without responding to its merits.<sup>21</sup> As noted in our response to these assertions,<sup>22</sup> our calculation simply demonstrated that the Supply pipeline was sufficient for the entire ten-year forecasted volumetric demand that was now known, having been evidenced in the interrogatory response.<sup>23</sup> Given the confusion asserted by EGI, FRPO cannot discern the weight that our calculation was given as its factual mathematical result was ignored in the decision.

Taken together, we respectfully submit that the denial of a technical conference to test the proposed pipelines capabilities and elicit evidence goes to the heart of the process, and effectively undermine its fairness having the effect of preventing FRPO from putting forward its case as that evidence is crucial to our case.<sup>24</sup>

In a similar **but not the same** vein, EGI conflates FRPO's motion with that of ED in its submissions on the FRPO's concerns regarding denial of a technical conference. First EGI states:<sup>25</sup>

*FRPO is a broad-based advocacy intervenor, describing itself in its intervention request as "Ontario's leading advocate for quality rental housing, representing over 800 private owners and managers who supply over 350,000 rental suites across the province." Its rights were not being decided on this application and it is not directly affected by (or have direct interests at stake) on this application.*

---

<sup>20</sup> EB-2023-0313

<sup>21</sup> EGI\_ReplySUB\_EB-2022-0111\_20240408\_eSigned, pg. 14-15

<sup>22</sup> FRPO\_CLARIFICATION\_EGI LTC BOBCAYGEON\_20240410

<sup>23</sup> Exhibit I.FRPO.2

<sup>24</sup> *ENMAX Energy Corporation v. TransAlta Generation Partnership*, 2022 ABCA 206 [ENMAX], para. 67

<sup>25</sup> EGI\_Submissions\_Motions\_20240912, pg. 35, para. 97-98

*Thus, for the same reasons described in paragraphs 40-46 above, it was not owed a duty of procedural fairness at common law.*

*Alternatively, even if a duty were owed, it would be at the low end of the spectrum based on the Baker factors addressed at paragraphs 49-55 above, and the process afforded by the OEB more than met any such duty.*

In the first referenced paragraphs, EGI outlines its arguments about legal precedent for ED as an “environmental organization”. FRPO is not an environmental organization but an association that represents the interests of its ratepaying members who are directly affected by virtue of their interest in property in Bobcaygeon as potential customers and their interest in the continued funding of NGEF. EGI’s statement about FRPO and the rights and interests of our members is misconceived.

Further, in the second reference paragraphs, when speaking to the nature of the decision and statutory scheme, EGI asserts that (t) *he legislative direction through the NGEF weighed heavily on the public interest analysis to be undertaken.*<sup>26</sup> As noted above, FRPO was and is not challenging the legislative direction. EGI goes on to assert (i) *n respect of the importance of the decision to the person affected: as noted above, ED is a broad-based environmental advocacy group.*<sup>27</sup> Once again, to apply its arguments against ED’s rights to FRPO is not appropriate.

b) FRPO Identified the Lack of Technical Information Inhibiting Determination

In our respectful submission, FRPO has a legitimate expectation that, given the Board’s history of Leave-to-Construct cases for facilities greater than \$100M, a technical conference would be provided to test the appropriateness of the proposed facilities.<sup>28</sup> In our view, this expectation would be particularly important given our expressed concerns about the lack of technical information in the application<sup>29</sup> to even formulate refined questions in the interrogatory phase. Further, when after the initial hiatus in the proceeding, the interrogatories left unanswered questions about pipeline sizing, we requested a technical conference.<sup>30</sup> This request was followed by a second long gap in the proceeding during which time a technical conference could have been held, at least on the pipe sizing issues, prior to the Board’s decision to deny a technical conference.<sup>31</sup>

---

<sup>26</sup> Ibid, para 51

<sup>27</sup> Ibid, para 52

<sup>28</sup> Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 SCR 817, para. 21, citing Knight v. Indian Head School Division No. 19, [1990] 1 S.C.R. 653, para. 26.

<sup>29</sup> FRPO\_REQ EGI COMPLETE EVID\_KAWARTHA\_20230703

<sup>30</sup> FRPO\_EGI LTC KAWARTHA\_FRPO REQ TECH CONF\_20230923

<sup>31</sup> Decision\_Procedural Order 2\_EGI Bobcaygeon NGEF\_LTC appn\_20240220

## **FRPO's Motion for a Stay was an Attempt at a Practical Solution**

We respected that the Board had approved service to the Bobcaygeon area aligned with the government's legislative direction. However, knowing our stated concerns over the lack of need for the Replacement pipeline early in the ten-year forecast period, FRPO offered the Stay in the alternative to a Motion hearing. Respecting the Board's time and Board staff's considered opinion,<sup>32</sup> we will not attempt to engage in a legal debate about what we saw as a time saving, practical approach. Therefore, we will withdraw our request.

## **Conclusion**

The Motion submitted by FRPO is the first by our organization in over 16 years of serving at the Ontario Energy Board. While we respect the legislative direction of the NGEF, we steadfastly believe that due process ought to ensure that a project should be supported by tested evidence to establish the proposal is the most cost-effective approach. To create conditions to allow evidentiary gaps to be closed, we respectfully submit that we should be able to rely on a legitimate expectation of procedural steps to elicit evidence to close those gaps in the public interest.

We thank the Board for providing this process and their consideration of our concerns submitted in the public interest.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON BEHALF OF FRPO,

Dwayne R. Quinn  
Principal  
DR QUINN & ASSOCIATES LTD.

---

<sup>32</sup> OEB\_Staff\_Submission\_FRPO and ED Motions\_20240912, pg. 21-28