

Ontario Energy Board

Commission de l'énergie de l'Ontario



Ontario Energy Board

Natural Gas Facilities Handbook

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1 General

This Natural Gas Facilities Handbook (Handbook) sets out the Ontario Energy Board's (OEB) expectations in relation to the following natural gas facilities and related applications:

1. Under the [Municipal Franchises Act](#)
 - a. Section 8, Certificate of Public Convenience and Necessity (certificate) Applications
 - b. Sections 9 and 10, Municipal Franchise Agreement (franchise) Applications
2. Under the *Ontario Energy Board Act, 1998* ([OEB Act](#))
 - a. Section 38, Designated Storage Area (DSA) Applications¹
 - b. Section 40, DSA Well Drilling Licence Application Referrals
 - c. Section 90 and 91, Leave to Construct (LTC) Applications
 - d. Section 95, Exemption from the Requirements for Section 90 LTC
 - e. Section 99, Expropriation Applications related to LTC approvals

This Handbook provides legislative and OEB policy context for, and outlines key principles and expectations generally applicable to, the applications listed above. The OEB expects applicants² to file these applications in a manner that is consistent with this Handbook, unless they can demonstrate a cogent rationale for departing from it. The OEB may require an applicant to file evidence in addition to what is identified in the filing requirements for a given application. An applicant may combine its requests for various types of approvals into a single application where it is appropriate to do so.

¹ A Designated Storage Area means an area of land designated by the OEB for the development and operation of a natural gas storage pool or reservoir.

² Applicants are also variously referred to in this Handbook as persons, proponents, utilities or distributors.

There are other types of natural gas related applications that are not covered in detail in this Handbook that proponents should be aware of and apply for, if required.³

1.1 The OEB's Statutory Objectives with respect to Natural Gas

In considering any application it receives that is related to natural gas, the OEB is guided by its statutory objectives for gas as set out in the OEB Act. Specifically, section 2 of the OEB Act provides that the OEB, in carrying out its responsibilities under the OEB Act or any other act in relation to gas, will be guided by the following statutory objectives:

1. To facilitate competition in the sale of gas to users
2. To inform consumers and protect their interests with respect to prices and the reliability and quality of gas service
3. To facilitate rational expansion of transmission and distribution systems
4. To facilitate rational development and safe operation of gas storage
5. To promote energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances
 - 5.1. To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas
6. To promote communication within the gas industry

1.2 Completeness and Accuracy of an Application

An application to the OEB must provide sufficient evidence to enable the OEB to determine whether the application should be approved. The onus is on the applicant to demonstrate to the OEB's satisfaction that the application should be approved. A clearly written, accurate and complete application that presents information and data consistently across all exhibits, and clearly demonstrates the appropriateness of the relief sought (e.g., approval or permission) is essential for an effective regulatory review and timely decision making. The OEB's examination of an application and its

³ These include compensation for gas or oil rights under section 38 of the OEB Act; leave to construct under section 91 of the OEB Act; the right to enter land under section 98 of the OEB Act; and authority to construct upon, under or over a highway etc. under section 101 of the OEB Act. Other approvals or permits, such as those required under the *Technical Standards and Safety Act, 2000* may also be required. Applicants are expected to address these types of applications on a case-by-case basis as required and can contact OEB staff to discuss them before filing.

subsequent decision are based on the evidence filed in that case. A complete and accurate evidentiary record is essential.

The filing requirements set out in this Handbook provide the minimum information that an applicant must file for a complete application. However, an applicant should provide any additional information that is necessary to justify the approvals being sought in the application.

The OEB will consider an application complete if it meets the applicable filing requirements. If an applicant cannot provide the required information, or it believes the required information is not applicable, it must provide an explanation of why it cannot provide the information or why the information is not applicable.

Upon the filing of an application, the OEB will undertake a completeness check of the application to assess whether the application includes all the information required by the applicable filing requirements. If so, the OEB will issue a letter to the applicant indicating the application is complete, and the OEB will begin its review of the application. If the application does not include all the information required by the applicable filing requirements, the OEB will issue a letter to the applicant identifying which information is missing. The OEB will not commence its review of the application until all the necessary information has been provided or a satisfactory explanation has been provided as to why certain information should not or cannot be provided.

1.3 Pre-Application Meetings

As is the case with any type of application, OEB staff is available to meet with applicants prior to an application being filed to discuss the OEB's expectations and requirements for that application type, including those contained in this Handbook. A pre-application meeting can be arranged by writing to registrar@oeb.ca and providing contact information and a brief description of the potential application including the legislative provision(s) that apply.

1.4 General Filing Requirements

The Handbook contains specific filing requirements for each of the application types listed in section 1 (General). In addition to the specific filing requirements, every application must contain the information set out below to the extent applicable to the application.

1.4.1 Contact Information

The applicant must provide the contact information (name, title, mailing address, telephone number and email address) for the applicant's primary representative and its

legal representative, if any. The primary and legal representative of any affected municipality should also be included.

1.4.2 Relief Requested

The applicant must provide a description of the relief (e.g., approval or permission) being requested from the OEB and the specific legislative provision(s) under which the relief is being sought.

1.4.3 Confidential Information

The OEB relies on full and complete disclosure of all relevant material to ensure that its decisions are well-informed. To ensure a transparent and accessible review process, applicants should make every effort to file all material publicly and completely.

However, the OEB's [Rules of Practice and Procedure](#) (Rules) and the [Practice Direction on Confidential Filings](#) (Practice Direction) allow applicants and other parties to request that certain filings be treated as confidential.⁴ Where such a request is made, participants are expected to review and follow the Rules and Practice Direction.

Applicants and other parties must ensure that filings for which they request confidential treatment are genuinely in need of confidential treatment.

1.4.4 Personal Information

All parties are reminded of the OEB's rules regarding personal information in any filing they make as part of a proceeding. Parties should consult Rule 9A of the OEB's Rules and Part 10 of the Practice Direction regarding how to file documents (including interrogatories) that have personal information in them.

Rule 9A of the OEB's Rules states that "any person filing a document that contains personal information, as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*, of another person who is not a party to the proceeding shall file two versions of the document." There must be one version of the document that is a redacted version of the document from which the personal information has been deleted or stricken, and a second version of the document that is un-redacted (i.e., that includes the personal information) and should be marked "Confidential—Personal Information".

The OEB does not expect that personal information would typically need to be filed beyond any that may be required by the applicable filing requirements. If an applicant must file personal information as part of its application, the onus is on the applicant to

⁴ The Rules and Practice Direction deal with confidential information and personal information differently. Among other things, confidential information is usually made available to representatives of parties from whom the OEB has accepted a Declaration and Undertaking, whereas personal information is not.

ensure that the application and any evidence filed in support of the application does not include any personal information unless it is filed in accordance with Rule 9A of the OEB's Rules and Part 10 of the Practice Direction applicable.

An application filed with the OEB must include a certification by a senior officer of the applicant stating that the application and any evidence filed in support of the application does not include any personal information unless it is filed in accordance with Rule 9A of the OEB's Rules and Part 10 of the Practice Direction.

An applicant is required to provide a similar certification when filing interrogatory responses or other evidence as part of a proceeding.

1.4.5 Certification of Evidence

An application must include a certification by a senior officer of the applicant that the information filed is accurate, consistent and complete to the best of their knowledge.

1.4.6 Additional Evidence

Applicants should include any other information that may be relevant to the application beyond that required by the filing requirements in this Handbook.

1.4.7 Electronic Filings

All materials filed with the OEB must be submitted in a searchable / unrestricted PDF format with a digital signature through the [OEB's web portal](#). Filings must clearly state the sender's name, postal address, telephone number and email address. Parties must use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#).

1.4.8 Duplicative Information When Filing Two or More Applications

The filing requirements for certain application types are similar (e.g., certificates and franchises). If an applicant is requesting more than one approval in a single application, then there is no need for the applicant to provide any required information more than once.

1.4.9 Updating an Application

When changes or updates to an application are necessary, a thorough explanation of the changes must be provided, along with revisions to the affected evidence and related schedules. This process is contemplated in Rule 11.02 of the *Rules of Practice and Procedure*. When these changes or updates are contemplated in later stages of a proceeding, applicants should proceed with the update only if there is a material change to the evidence already before the OEB. Rule 11.03 states that any such updates should clearly indicate the date of the revision and the part(s) revised.

1.4.10 Interrogatories

The OEB is aware of the number of interrogatories (i.e., information requests) that the regulatory review process can generate. The OEB advises applicants to consider the clarity, completeness and accuracy of their evidence to reduce the need for interrogatories. Furthermore, the OEB expects that applicants and other parties filing evidence will file appropriate, relevant, accurate and complete evidence. A sub-standard or inaccurate application, and the re-filing or updating of evidence can extend the time for the OEB's review. Applicants should not file information that they consider not relevant to the proceeding. The OEB also advises all parties to carefully consider the relevance and materiality of information before requesting it through interrogatories.

The OEB reminds parties not to engage in detailed exploration of items that do not appear to be material. In making its decision on cost awards, the OEB will consider whether intervenors made reasonable efforts to ensure that their participation in the hearing was focused on material issues.

Parties should consult Rules 26 and 27 of the OEB's *Rules of Practice and Procedure*, for additional information on the filing of interrogatories and responses, and matters related to such filings.

1.5 Indigenous Consultation

The OEB is committed to ensuring that Indigenous peoples (First Nations, Inuit and Métis peoples) have an opportunity to bring their views forward and to participate in any proceedings that may impact their rights or interests. This includes the duty to consult.

With respect to natural gas facilities applications, the duty to consult most often arises in the context of applications for leave to construct natural gas facilities under section 90 of the OEB Act. For this reason, the OEB has for many years had a specific Indigenous consultation policy for those applications, which requires the Crown and project proponents to undertake certain activities to ensure that the duty to consult is adequately addressed. This process is set out in the OEB's [*Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario*](#), and is summarized in section 4.4.6 below.

Impacts on Indigenous rights or interests (including but not limited to the duty to consult) can arise in other proceedings. Where that is the case, representatives of affected Indigenous communities are encouraged to participate in the proceeding and make their views known to the OEB. Further information regarding the OEB's role and how to participate is set out on the [OEB's Consultation with Indigenous People's webpage](#).

2 Municipal Franchise Agreement

2.1 Introduction

A person is not permitted to provide gas distribution service within a municipality in Ontario unless the requirements of the *Municipal Franchises Act* have been met. These include obtaining a franchise from the municipality in which the works are to be located and having the terms and conditions of the franchise approved by the OEB. These terms and conditions are typically set out in the form of a franchise agreement.

A municipal franchise agreement deals primarily with the relationship between the municipality and the gas distributor with respect to issues such as the use of the municipal road allowances for the construction of the facilities. Virtually all municipal franchise agreements in Ontario are in the form of the OEB's standard [Model Franchise Agreement](#).

A municipal franchise does not grant exclusive rights to the gas distributor, although in most cases only one utility will hold a franchise agreement for any particular area. As a result of municipal reorganizations and consolidations over the years, in some cases a municipality will have franchise agreements with more than one gas distributor for different parts of its territory. The fact that a person holds a franchise agreement with a municipality is not a bar to another person also obtaining a franchise agreement with the same municipality, although the OEB will generally not issue certificates to different persons that cover the same geographic area within a municipality. The rights granted through a franchise agreement are not necessarily exclusive.

It is important to note that a franchise agreement, in and of itself, does not authorize the construction of facilities. Construction of facilities is only permitted after a utility has obtained from the OEB a valid certificate under the *Municipal Franchises Act* and, where applicable, leave to construct, as well as obtaining any permits, approvals and agreements from other agencies or bodies that may be required for construction to proceed. An application for the approval of a municipal franchise agreement may be made at the same time as an application for a certificate.

2.2 Legislation

Section 3 of the *Municipal Franchises Act* states that a municipal corporation may not grant any person the right to use or occupy any municipal highway or construct or operate any natural and other gas works⁵ in a municipality unless a by-law setting out

⁵ The *Municipal Franchises Act* defines "gas" as follows: "natural gas, manufactured gas or any liquified petroleum gas, and includes any mixture of natural gas, manufactured gas or liquified petroleum gas, but does not include a liquified petroleum gas that is distributed by means other than a pipe line".

the terms and conditions applicable to such right has been assented to by the municipal electors. As noted above, these terms and conditions are typically set out in the form of a franchise agreement.

Section 9 of the *Municipal Franchises Act* states that no by-law granting the right to construct or operate gas facilities shall be submitted to the municipal electors for their assent unless the terms and conditions related to the by-law have first been approved by the OEB. However, section 9 (4) of the Act provides that the OEB may by order declare and direct that the assent of the electors is not necessary if the OEB is satisfied that such assent may be properly dispensed with.

In the vast majority of cases, the OEB declares and directs that the assent of the municipal electors is not necessary. The OEB will typically do so upon having reviewed a resolution issued by municipal council (and filed with the application) approving the form of draft by-law and draft franchise agreement and authorizing the applicant to submit them to the OEB for approval. Accordingly, where an applicant is seeking to dispense with the assent of the municipal electors, it should include, as part of its franchise application, the municipality's resolution, draft by-law and draft franchise agreement.

Most franchise agreements are for a term of 20 years. Section 10 of the *Municipal Franchises Act* allows either the municipality or the gas distributor to apply for a renewal of the franchise agreement up to a year before the expiration of their current franchise agreement. Where the OEB approves the renewal or extension of a franchise by issuing an order under section 10, the order is deemed to be a valid by-law of the municipality.

2.3 Model Franchise Agreement

The OEB adopted the [Model Franchise Agreement](#) following significant input from interested stakeholders, including the Association of Municipalities of Ontario and natural gas distributors, to provide guidance to applicants and municipalities regarding the standard terms of a franchise agreement and as a tool to efficiently administer the many franchise agreements across the Province.⁶ The Model Franchise Agreement provides a template to guide applicants and municipalities regarding the terms that the OEB finds reasonable under the *Municipal Franchises Act*⁷, including a term of 20

⁶ RP-1999-0048

⁷ Part II of the Model Franchise Agreement requires the applicant to select one of two wording options depending on whether the agreement is with an upper or lower tier municipality.

years. Accordingly, the OEB expects that franchises will be based on the Model Franchise Agreement, unless there is a compelling reason for deviation.⁸

The [Gas Franchise Handbook](#) is a supplement to the Model Franchise Agreement and serves as a consolidated guide for dealing with operating issues that sometimes require a greater level of detail than appears in the franchise agreement itself.

2.4 Filing Requirements

When applying for approval or renewal of a franchise agreement under section 9 or 10 of the *Municipal Franchises Act*, the application must include the following.

1. Confirmation as to whether the application is for a new franchise area, or a renewal or extension of an existing franchise area.
2. A brief written description of the proposed franchise area⁹, including the physical boundaries (e.g., municipal boundaries, metes and bounds, on-from-to) and the number and general location of any customers to be served or currently served in the proposed franchise area.
3. A map of the boundaries of the requested franchise area, the municipal boundaries, major roads and other geographic features marked clearly, and, at the discretion of the applicant, illustrating either:
 - a. The applicant's natural gas facilities in the proposed franchise area and the number and general location of customers to be served or currently served by the applicant in the proposed franchise area
 - b. The customer density of the proposed franchise area (often provided in the form of a colour coded map that illustrates customer density or "heat map")
4. Documentation on any existing franchise agreements and certificates:
 - a. Where applicable, a copy of any existing certificate(s) pertaining to the proposed franchise area.
 - b. Where applicable, a copy of the current by-law and franchise agreement.

⁸ An example of a case in which the OEB allowed a deviation is [EB-2008-0413](#). An example of a case in which the OEB did not allow a deviation is [EB-2017-0232](#).

⁹ A franchise area is the geographical territory within a municipality that the franchise agreement is intended to cover

5. Where applicable, a description of any embedded and adjacent franchise areas and the name of any person who serves them.
6. In the case of an application under section 10, a detailed description of any material amendments to the municipality's boundaries (e.g., municipal amalgamations or annexations) within the period of the existing franchise agreement and how such amendments relate to the franchise application.
7. A copy of the draft by-law and the proposed franchise agreement (which should be in the form of the Model Franchise Agreement unless a compelling reason exists for departing from it).
 - a. A copy of the resolution of the Council of the Municipality approving the form of the draft by-law.
 - b. Where applicable, a description of any proposed variance from the Model Franchise Agreement and the supporting rationale outlining the circumstances that would warrant such consideration.

2.5 Post-hearing Filings

An applicant is required to file the certified electronic copy of the signed franchise agreement by-law and an affidavit confirming delivery to the municipality within four months of the issuance of the OEB's decision granting the franchise. If the applicant is not able to do so, it must provide the OEB with a letter outlining the reasons for the delay and an expected date by which it will file the signed documents.

3 Certificate of Public Convenience and Necessity

3.1 Introduction

A person must have authorization from the OEB, in the form of a certificate, prior to constructing works to supply natural gas in Ontario.¹⁰ Applications for certificates are made under section 8 of the *Municipal Franchises Act*.

A certificate will define the specific area within a municipality where a utility is permitted to construct natural gas works. The OEB may issue a certificate that does not cover the entire geographic area of a municipality but is instead limited to a route along certain defined roads (also known as "on-from-to") or an area defined by metes and bounds.

¹⁰ Generally, a certificate is required for natural gas works in any municipality. However, for information regarding the requirement for a certificate outside a municipality, see the OEB's November 29, 1994, decision in EBC 211.

The OEB can issue multiple certificates to different persons for different areas within in a single municipality. The OEB generally will not, however, issue certificates with overlapping areas as a precaution against creating confusion among utilities, consumers, emergency responders and other authorities. An exception may be a utility having a certificate for a “traversing pipeline” that crosses another utility’s service area.

The OEB will generally only grant certificates at the lower-tier municipal level. If the OEB receives a certificate application relating to an upper-tier municipality, the OEB will generally return the application and require the applicant to reapply at the lower-tier level. This practice helps to avoid certificate overlap.

If a certificate has been issued for a particular area in which there is currently no gas distribution service, another person may apply for a certificate to serve that area.¹¹ The OEB may amend an existing certificate¹² to remove authorization to serve a specific geographic area and grant that authorization to another person, if public convenience and necessity require that such authorization be given. In so doing, the OEB would seek to ensure that the two certificates would cover mutually exclusive areas.

3.2 Legislation

Section 8 of the *Municipal Franchises Act* states, in part, that no person shall construct any works to supply natural gas in any municipality without the approval of the OEB, and that such approval shall only be given where public convenience and necessity appear to require it. The approval of the OEB takes the form of a certificate. Certificates are generally issued in perpetuity (i.e., without “sunset” dates).

3.3 A Certificate Associated with an LTC Application

Where a person needs both a certificate and leave (i.e., permission) to construct, they may file both applications together or separately. However, the OEB will generally not grant the certificate until after the leave to construct has been granted or will grant the certificate conditionally upon the leave to construct being granted. This helps to ensure that certificates are issued only for areas where public convenience and necessity require them.

3.4 Competing Certificate Applications

Where the OEB receives an application from a person intending to expand its system to provide natural gas service to any number of currently unserved customers (possibly

¹¹ EB-2016-0004, Generic Proceeding on Community Expansion, OEB Decision with Reasons, November 17, 2016, page 20

¹² When amending existing certificate rights, the OEB typically cancels the existing certificate and issues a new certificate

within another person's certificate area), the OEB may initiate a competitive process to determine whether any new or amended certificates are warranted.

The scope of the competitive process and the information required by the OEB will be commensurate with the scope of the proposed projects, and the OEB will provide direction to the competing parties accordingly. For example, large-scale projects (e.g., community expansion projects) may require the competing parties to file proposals based on a Common Infrastructure Plan.¹³ For smaller-scale projects (e.g., new service to a small number of customers) the competing parties may be required to file proposals identifying the earliest feasible in-service date, estimated capital cost, any required customer capital contribution, and an infrastructure diagram including a bill of materials.¹⁴

At the end of the competitive process, the OEB will determine which of the competing parties is the successful proponent and will also address any approvals that the successful proponent has applied for. At that time, the OEB may also provide direction on next steps where needed. Depending on the circumstances, the next step may be for the successful applicant to file a complete application seeking any outstanding approval(s).

3.4.1 Community Expansion Projects

Community expansion projects are projects intended to serve customers in communities that do not currently have natural gas service. For certain community expansion projects, the OEB may hear proposals from competing applicants and determine which is best suited to provide safe and reliable service at a reasonable cost to the new consumers. A competitive process may be initiated if the project would require the OEB's approval of one or both of the following:

1. Leave to Construct
2. A new or amended certificate

¹³ A Common Infrastructure Plan is a common set of assumptions (e.g., depreciation rates) and other inputs (e.g., names of communities to be served) that serves as the basis for the proponents to determine the revenue requirements associated with their respective proposals. Aspects of the proposals not included in the Common Infrastructure Plan (i.e., aspects left to competition) include forecast customer attachments, and pipeline design and routing. By using a Common Infrastructure Plan, the OEB can compare the stated revenue requirements on a common set of parameters. For reference, see the EPCOR South Bruce proceeding EB-2016-0137 / 0138 / 0139.

¹⁴ For reference, see the Union Gas Certificate Overlap proceeding EB-2017-0108

Proponents of community system expansion projects that require leave to construct or a new or amended certificate are required to follow the notification process described below in section 3.4.1.1.

3.4.1.1 Notice of Intent

A proponent whose system expansion project may trigger a competitive process is required to file a letter that notifies the OEB of its intent to pursue the proposed project¹⁵ and that provides the following information:

1. The full legal name of the proponent, its business address, and the name and contact information of the proponent's representative
2. A brief description of the proposed project that addresses topics such as the location, need for the project, number of prospective customers, construction schedule, and in-service date
3. A summary of the work already undertaken to support its future application(s) to the OEB
4. The date by which the proponent will be ready to file a complete application(s) to provide the new natural gas distribution services

The OEB will review the proponent's letter and determine whether the information provided is sufficient or additional information is required. In either event, the OEB will provide direction in writing to the proponent.

Where the OEB determines that it will conduct a competitive process and it is satisfied with the information provided by the proponent, it will publish a Notice that seeks expressions of interest from any party that is working toward a substantively similar project. The OEB will set a deadline by which the expressions of interest must be filed with the OEB. The deadline is typically 10 business days after the OEB has issued its Notice for expressions of interest.

Anyone responding to the OEB's request for expressions of interest must respond in writing and provide the same information that was required of the original proponent as referenced above (e.g., full legal name, brief description of the proposed project, work undertaken to date). Incomplete expressions of interest may not be considered by the OEB.

If one or more complete expressions of interest are received by the deadline, the OEB may initiate a competitive process. Otherwise, the OEB will proceed to review the

¹⁵ The onus is on the applicant to determine the best timing for the letter; however, it must be filed in advance of any application to the OEB for the necessary approvals

application(s) for the proposed project when they are filed and will not delay its review of the application to accommodate the filing of any competitive application in the matter.

3.4.2 Small Projects in Another Person's Certificate Area

A proponent may elect to file an application to serve a few unserved customers within another person's certificate area where it appears that the proponent may be able to provide service more economically than the incumbent certificate holder due, for example, to the proximity of existing pipeline infrastructure.

If the incumbent certificate holder does not object to another person providing service to the intended customers despite the incumbent's existing certificate rights, then the OEB may proceed without a competitive process. The person should file written confirmation that the incumbent certificate holder consents to the proposal.

If the incumbent certificate holder has objections to the application, it should apply for intervenor status in the proceeding. The competing parties may be required to file proposals identifying the earliest feasible in-service date, estimated capital cost, any required customer capital contribution, and an infrastructure diagram including a bill of materials.¹⁶

3.5 System Bypass

A system bypass occurs when a customer (often a large industrial customer) seeks to obtain natural gas distribution or transmission service from someone other than the utility that holds the certificate for that territory. The customer may instead seek service from another party (which may be a different natural gas utility) or install and operate its own facilities.

The OEB evaluates each application for a system bypass on its merits. Three questions that the OEB has considered are:¹⁷

1. Can the incumbent gas distributor meet the operating needs of the customer that is the subject of the system bypass application?
2. Will any of the distributor's assets be stranded?
3. Would allowing a system bypass materially harm existing ratepayers or otherwise not be in public interest?

The OEB has established the following principles regarding system bypass:

¹⁶ Such as in the case of the Union Gas Certificate Overlap proceeding, EB-2017-0108

¹⁷ EB-2014-0299 (Greenfield South Power Corporation), Decision and Order, page 9

- a) Economic benefit to the customer alone is not sufficient grounds to permit system bypass.¹⁸
- b) That a system bypass is in the interest of the customer does not negate the possibility that it could also be in the public interest.¹⁹
- c) If the incumbent gas distributor cannot meet the needs of the customer, and there is no material harm to existing ratepayers, then a system bypass may be granted.²⁰
- d) While there may be a lost opportunity in terms of foregone revenues for the incumbent gas distributor and its ratepayers, the OEB has taken the view that there will not be lost revenues for the incumbent gas distributor if the load is incremental.²¹

3.6 Post-Approval Municipal Changes

3.6.1 Municipal Name Changes

If the name of the municipality changes after the OEB has issued a certificate, then the certificate holder should notify the OEB within 90 days of the date that the new name takes effect to have the certificate amended to reflect the new name of the municipality.

3.6.2 Municipal Changes that do not affect another Person's Certificate Rights

If the boundaries of a person's existing certificate are affected by a municipal amalgamation or annexation, and no other person holds a certificate for any part of the newly amalgamated or annexed municipal territories, then the person should notify the OEB within 90 days of the date that the change takes effect to have the certificate amended to reflect the change. The OEB will not as a matter of course amend the territory covered by the person's existing certificate to include any additional service area that was added to the municipality through the amalgamation or annexation. The certificate would be amended to include the metes and bounds of the person's existing certificate.²² However, the certificate holder could also apply for a new certificate that would include any additional service area within the newly amalgamated territories.

¹⁸ EBRO-477 (Cardinal Power, 1993) as referenced in EB-2014-0299 (Greenfield South Power Corporation), Decision and Order, page 7

¹⁹ EB-2014-0299 (Greenfield South Power Corporation), Decision and Order, page 9

²⁰ Ibid., page 10, page 4

²¹ Ibid., page 10

²² OEB's Decision and Order in Enbridge Gas Inc. and EPCOR Natural Gas Limited Partnership's application for certificates of public convenience and necessity for Norfolk County, the County of Elgin, and the County of Middlesex, EB-2017-0108, issued October 11, 2018

3.6.3 Municipal Changes that may affect another Person's Certificate Rights

If the boundaries of a person's existing certificate are affected by a municipal amalgamation or annexation and a different person holds one or more certificates in the newly amalgamated or annexed municipal territory, then both persons should apply to the OEB within 90 days of the date that the change takes effect to have their certificates amended to reflect the change.

3.7 Filing Requirements

When applying for a new or amended certificate under section 8 of the *Municipal Franchises Act*, the application must include the following.

1. In cases where the certificate is for a single discrete project, a summary of the project for which the certificate is being requested.
2. Confirmation as to whether the application is for a new certificate area²³ or an amendment of an existing certificate area.
3. A brief written description of the proposed certificate area, including the area's physical boundaries (e.g., municipal boundaries, metes and bounds, on-from-to) and the number and general location of any customers to be served or currently served in the proposed certificate area.
4. A map that includes the boundaries of the proposed certificate area, applicable municipal boundaries, major roads, and other geographic features marked clearly, and illustrating either:
 - a. The applicant's natural gas facilities in the proposed certificate area and the number and general location of customers to be served or currently served by the applicant in the proposed franchise area
 - b. The customer density of the proposed certificate area (often provided in the form of a colour coded map that illustrates customer density or "heat map")
5. Where applicable, copies of the most recently granted franchise agreement and certificate(s) for the area.²⁴
6. Where applicable, a description of any embedded and adjacent certificate areas and the name of any person who serves the surrounding areas.

²³ A certificate area is the geographical territory that the requested certificate is intended to cover

²⁴ The most recently granted certificate may have been issued to a person other than the applicant.

7. A confirmation that the proposed certificate does not overlap with any other person's certificate. In cases where there is overlap, provide a description of the location and extent of the overlap.

3.8 Filing Requirements for New Entrants

New entrants (i.e., applicants who have not previously been granted a certificate by the OEB), are required to file additional information to enable the OEB to assess whether they have the technical and financial capacity to construct, operate and maintain gas works. This is required in addition to any other information required by this Handbook.

Financial Capacity

The new entrant must describe its financial capability to develop, construct, operate and maintain the natural gas works that are contemplated in the certificate area and provide the following:

1. Its current credit rating, or that of its parent or associated companies
2. Financial statements for each of the past two fiscal years. This may include audited financial statements, annual reports, prospectuses or other such information. If the proponent does not have financial statements (because it is a new entity), the proponent is instead to provide pro forma financial statements for two years along with notes or business plans explaining the assumptions used in preparing the pro forma statements, where the documents must be signed by at least one key individual.
3. If additional debt or equity is required to finance the natural gas works contemplated in the certificate area, evidence of the applicant's ability to access the debt and equity markets

Technical Capacity

New entrants must describe their technical expertise to develop, construct, operate and maintain the natural gas works that are contemplated in the certificate area. This should include providing information such as the items in the following list. If this information cannot be provided, then the applicant should provide an explanation of why this is the case.

1. Qualifications of the senior leadership team and resumes of key personnel
2. Organizational chart for operations personnel
3. Construction, operating and maintenance procedures

4. Licence to distribute natural gas from the Technical Standards and Safety Authority (TSSA)²⁵
5. Emergency response procedures
6. Location and staffing level of the call center, control center, or other facility for the receipt of emergency calls, during all hours, and the emergency dispatching of operations personnel (if other than the control room)
7. Pipeline integrity management plans
8. Operator qualification plans and documentation of employee qualifications
9. Public awareness plans²⁶

4 Leave to Construct

4.1 Introduction

No person is permitted to construct any intra-provincial hydrocarbon pipeline that meets any of the criteria set out in section 90 of the OEB Act, without first receiving an order granting leave to construct (LTC) under section 96 of the OEB Act from the OEB. Section 89 of the OEB Act defines a hydrocarbon line as “a pipe line carrying any hydrocarbon, other than a pipe line within an oil refinery, oil or petroleum storage depot, chemical processing plant or pipe line terminal or station.”²⁷ The OEB Act does not distinguish between transmission and distribution pipelines for the purposes of LTC.

The requirement to obtain LTC applies irrespective of whether the applicant wishing to construct the pipeline is or intends to become rate regulated by the OEB.²⁸

Section 91 of the OEB Act permits a person that wishes to construct a hydrocarbon pipeline or station to which section 90 does not apply to nevertheless apply for LTC.

²⁵ The TSSA is Ontario’s public safety regulator and is mandated by the Government of Ontario to enforce technical safety regulations and enhance public safety in a variety of areas including fuels (e.g., natural gas) and pipelines.

²⁶ Public Awareness Plans are used to raise awareness among stakeholders (e.g., customers, general public, first responders, excavators) about the presence of buried natural gas pipelines and associated facilities in order to enhance safety (e.g., recognize symptoms of carbon monoxide poisoning, prevent third party damages).

²⁷ For clarity, “pipeline” and “pipe line” are alternative spellings for pipeline.

²⁸ Rate regulated companies may seek to recover costs associated with a project from ratepayers through separate rate cases; non-rate regulated companies provide their own project funding.

4.2 Legislation

Section 96 (1) of the OEB Act states that after the OEB considers an application under section 90 or 91, if it is of the opinion that the proposed work is in the public interest, it shall make an order granting leave to construct the work. If the OEB is not satisfied that the proposed project is in the public interest, it will not approve the application.

The OEB also has authority over the form of agreements that have been or will be offered to landowners affected by the pipeline project under section 97 of the OEB Act.

4.2.1 Leave to Construct

Under section 90 (1) of the OEB Act, and subject to the exception set out in section 90 (2), LTC is required if one or more of the following criteria are met:

1. The pipeline is more than 20 kilometres in length, or
2. The projected cost of the pipeline is more than the amount prescribed by regulation, or
3. Any part of the pipeline has:
 - a) A nominal pipe size of 12-inches or more, and
 - b) An operating pressure of 2000 kilopascals or more.

In determining the projected cost of the pipeline, the applicant is required to include all capital costs required to construct the project, including such things as development costs, labour, material, equipment, contingency, indirect overheads, and external costs (e.g., external legal and other consultants).

Section 90 (2) exempts the relocation or reconstruction of a pipeline from the need to obtain LTC unless there is:

1. A change in the size of the pipeline; or
2. A need to acquire additional land or authority to use additional land.

Section 91 of the OEB Act permits a person to apply for LTC even if none of the criteria of section 90 (1) apply. This option may be exercised, for example, if the applicant believes there may be a need to apply to the OEB for authority to expropriate land for the work under Section 99.

In addition to the right to construct the facilities, a LTC approval granted by the OEB enables the holder of that leave to enter land to conduct surveys and examinations that

are necessary to prepare for fixing the site of the work (section 98 (1) of the OEB Act).²⁹ Under section 98 (2) of the OEB Act, a person that has applied for LTC may apply to the OEB for an order allowing them to enter land for the same purpose provided that the applicant has filed the map required by section 94 of the OEB Act.

4.2.2 Exemption from the Requirement to Obtain LTC

Section 95 allows the OEB, without a hearing, to exempt a person from the requirement to obtain LTC if, in the OEB's opinion, special circumstances of a particular case so require.³⁰ The level of detail in a section 95 application should be sufficient to provide adequate context for the project and an understanding of the special circumstances being relied on. This could include, as applicable, an explanation of the project route/location, need for the project, project costs, project design, project alternatives, environmental impacts, landowner impacts, and Indigenous consultation.

4.3 Multi-Phase Pipeline Projects

Whenever possible, the OEB expects that all phases of a multi-phase pipeline project will be captured in a single comprehensive LTC application.³¹ The filing requirements would apply for all phases of the project (i.e., evidence in support of the need, project costs and economics, environmental assessment, etc., for the overall project).

The OEB acknowledges that there may be circumstances that do not allow an applicant to file a comprehensive application that includes all phases of a project.³² If it is not possible to seek approval for all phases of the project at the same time, the applicant must provide a detailed rationale supporting its request that the OEB approve only one or more phases of the overall project in advance of the remainder of the project. The applicant should demonstrate how the project fits within any relevant growth plans for the area and/or the applicant's asset management plans (e.g., identify any dependencies between the proposed project and previously approved LTC projects or, in the case of a large project, between the proposed project and future phases of the project).

²⁹ This also applies where the project has been exempt from the requirement to obtain leave to construct under section 95 of the OEB Act.

³⁰ The OEB Act does not define "special circumstances" and the OEB has determined whether special circumstances exist on a case-by-case basis. Examples of past section 95 applications include: Enbridge Gas, York Pipeline Replacement (requested by the municipality), [EB-2013-0407](#); Union Gas, Panhandle Pipeline Relocation (s. 95 request denied and LTC hearing held); [EB-2015-0366](#); Union Gas, Brantford Pipeline Replacement (pipeline integrity project), [EB-2018-0204](#).

³¹ Enbridge Gas Inc., St. Laurent Pipeline Project, EB-2019-0006

³² For example, where the first phase of the project needs to move forward immediately to align with the timing of municipal roadwork and evidence associated with the future phases is not yet available.

The OEB understands that certain information may change when future phases are sought for approval, but the OEB's expectation is that the applicant will provide information on its multi-phase pipeline projects on a best-efforts basis.

4.4 Standard LTC Issues List

When determining whether a pipeline project is in the public interest, the OEB typically examines the need for the project, project alternatives, project cost and economics, environmental impacts, land matters, and Indigenous consultation. The OEB has developed a standard LTC issues list that is designed to capture all the issues that are within the scope of a typical LTC proceeding (see Appendix A). The OEB recognizes that some cases can raise unique issues, and the schedule for complex LTC proceedings³³ contemplates that submissions on the issues list may be needed, and that in some cases new issues will be added to the standard issues list. The following is a summary of the issues on the standard issues list.

4.4.1 Need for the Project

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, or engineering reports.

4.4.2 Project Alternatives

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

The applicant must demonstrate that it compared the alternatives using appropriate metrics including costs and cost savings, economic feasibility (Profitability Index, Net Present Value), timing, reliability, safety, land use requirements, permitting requirements, stakeholder impacts (e.g., municipalities, landowners, Indigenous communities) and environmental impacts.

Further detail and requirements related to the presentation of project alternatives can be found in the [*Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario*](#) (Environmental Guidelines).

³³ <https://www.oeb.ca/industry/applications-oeb/performance-standards-processing-applications>

4.4.2.1 Upsizing of Pipe Diameter

An applicant may request leave to construct a hydrocarbon pipeline that is larger in diameter than the minimum size required to meet the current need (sometimes referred to as “upsizing”). If sufficient justification for the upsize is not provided, the OEB may approve only the minimum sized facilities required to meet the current need.³⁴

4.4.2.2 Integrated Resource Planning

As part of all applications for LTC, the applicant should provide evidence of how IRP,³⁵ including demand side management (DSM), has been considered as an alternative at the preliminary stage of project development. The aim of IRP is to avoid building additional pipeline infrastructure where there are other options available, and to ensure that applicants have thoroughly considered all potential “non-build” alternatives. In 2021 the OEB approved an IRP Framework for Enbridge Gas, which is provided as Appendix B to this Handbook. Other applicants for LTC are encouraged to use this IRP Framework as a resource to guide their infrastructure planning and consideration of non-pipeline alternatives.

4.4.3 Project Costs and Economics

This section applies only to applicants that are or intend to become rate regulated and seek to include the project costs in a future rates application.

Project Costs

The applicant must provide sufficient information to demonstrate that the estimates of the project costs are reasonable (e.g., a comparison with recent similar projects).

The applicant must adequately identify and describe any risks associated with the proposed project and demonstrate that the proposed contingency budget is appropriate and consistent with the identified risks.

Although project costs are reviewed in detail through the LTC proceeding, the applicant still requires OEB approval to recover those costs in rates that will only apply beginning (at the earliest) in the year in which the in-service date falls. In most cases, the project costs will not be reviewed again in detail in the rates proceeding unless there are material changes relative to the forecast costs of the project that were included in the LTC application.

Project Economics

³⁴ Enbridge Gas Inc., Saugeen Shores LTC Project, EB-2019-0187

³⁵ As established in the OEB’s Decision and Order in EB-2020-0091, Enbridge Gas’s Integrated Resource Planning Proposal (July 22, 2021) including Appendix A to the Decision and Order, the IRP Framework

The applicant must demonstrate that the project's economics meet the OEB's economic tests using the methodology outlined in [EBO 188](#) or [EBO 134](#), as applicable. Where a contribution in aid of construction is required from a customer to make a project feasible, the applicant must demonstrate that the amount of the contribution is reasonable and consistent with EBO 188, EBO 134 and its own customer connection policies. An applicant may propose to use an Hourly Allocation Factor (HAF) to allocate the capital costs of a project amongst existing and future customers of those facilities for the purpose of calculating the contribution in aid of construction. If so, the applicant must demonstrate that the project is eligible or suitable for it, and that the proposed methodology for calculating the HAF is reasonable.³⁶

If a community expansion project is not economic based on existing rates, an applicant may request a surcharge (e.g., a system expansion surcharge³⁷ or temporary connection surcharge³⁸).³⁹

Economic Tests: EBO 188 and EBO 134

One of the OEB's statutory objectives is to facilitate rational natural gas expansion, and in so doing the OEB ensures that there is no undue cross-subsidization between existing and new customers. Two decisions issued by the OEB, EBO 188 and EBO 134, describe some of the economic thresholds that natural gas expansion plans need to meet to be eligible for cost recovery through OEB approved rates. The EBO 188 economic feasibility test guidelines apply to distribution pipelines, whereas the EBO 134 economic feasibility test guidelines apply to transmission pipelines.

The applicant must file evidence describing in detail how the proposed project meets the economic tests described in EBO 188 or EBO 134, as applicable, to demonstrate that the project does not lead to undue cross-subsidization from existing customers.

EBO 188

By way of summary, the EBO 188 decision describes the economic test that should be used to evaluate a proposed expansion of a natural gas distributor's distribution system.

³⁶ For reference, see Enbridge Gas Inc.'s SES / TCS / HAF application, EB-2020-0094

³⁷ An SES is a charge to new customers of a community expansion project to improve the financial feasibility of the project and avoid cross-subsidization by existing customers.

³⁸ A TCS is a charge to new customers of a non-community expansion project to improve the financial feasibility of the project and avoid cross-subsidization by existing customers.

³⁹ Such as with Enbridge Gas Inc.'s SES / TCS / HAF application, EB-2020-0094. Currently only Enbridge Gas Inc. has blanket approval to charge an SES or a TCS. In its decision (issued on November 5, 2020), the OEB approved Enbridge Gas Inc.'s application for blanket approval to charge an SES for community expansion projects serving 50 or more customers and a TCS for small main extension and customer attachment projects serving less than 50 customers.

The key principle behind the test is that a distributor's total portfolio of expansion projects should not result in undue cross-subsidization from existing customers over the long term. This analysis is performed using a discounted cash flow analysis to calculate the Profitability Index (PI) of a project: a PI of less than 1.0 indicates that the revenues forecast from a new project are less than the forecast costs, and a PI greater than 1.0 indicates that the forecast revenues of a project are greater than the forecast costs. For individual distribution projects requiring LTC, the OEB typically expects that the PI will be at least 1.0. In cases where a project is below a profitability index (PI) of 1.0, a distributor may ask the new customers to pay an upfront contribution in aid of construction to increase the PI to 1.0 for the project or may apply for a SES.

EBO 134

Like EBO 188, the EBO 134 guidelines direct applicants to use a discounted cash flow method to calculate the PI for the project as a minimum test in assessing the feasibility of transmission projects. The difference between EBO 134 and EBO 188 is the inclusion in EBO 134 of Stage 2 and Stage 3 cost/benefit analyses, and that not all transmission projects will require a PI of at least 1.0. The second stage is intended to quantify other public interest factors not considered at stage one. All other quantifiable public interest information (costs and benefits) should be provided at this stage. The third stage is intended to consider any other relevant unquantifiable costs and benefits in addition to the results from stage one and stage two.

The test in EBO 134 is generally applicable to a project where there will be no distribution customers directly connected to the pipeline.⁴⁰

4.4.4 Environmental Impacts

The OEB will consider any input from the [Ontario Pipeline Coordinating Committee](#) (OPCC), which is a committee chaired by a member of OEB staff and comprised of standing representatives of several provincial ministries and agencies.⁴¹ In addition to its standing members, the OPCC may also include representatives of municipalities and other provincial (e.g., Niagara Escarpment Commission) or federal authorities (e.g., National Capital Commission) depending on the location of the project. The OPCC's mandate is to provide for a coordinated process, within the timelines contained in the Environmental Guidelines, to review the environmental report and provide comments on environmental impacts and potential related issues. In accordance with the Environmental Guidelines, prior to filing an application with the OEB an applicant is required to distribute the Environmental Report to OPCC members and seek comments and direction on potential impacts and recommended mitigation measures. The

⁴⁰ Union Gas Limited, Kingsville Reinforcement Project, EB-2018-0013, Decision and Order, page 4

⁴¹ Updated listing of OPCC members is posted on the OEB website

Environmental Report and the record of any feedback provided by members of the OPCC, including any issues and concerns, potential environmental effects and proposed mitigation, are required to be filed in the evidence supporting the application. An applicant is also required to provide a list of all permits and approvals required by OPCC members and any other project specific permits and approvals together with expected acquisition timelines. Applicants are advised to refer to the Environmental Guidelines for more information on the Environmental Report and related environmental filings.

4.4.5 Route Map and Form of Landowner Agreements

Route Map

Section 94 of the OEB Act requires that an applicant file with their LTC application a map showing the general location of the proposed facilities and includes the municipalities, highways, railways, utility lines and navigable waters that the pipeline will go through, over, under, upon or across. The map must be suitable for print publication.

Form of Land Rights Agreement to be Approved

Section 97 of the OEB Act states that the OEB may not grant LTC until the applicant satisfies the OEB that they have offered or will offer an agreement in the form approved by the OEB to each owner of land affected by the approved route or location of the facilities to be constructed. Appendix C sets out the types of clauses that must be included in an agreement. An applicant must provide this form of agreement to the landowner's attention, and it is expected that this form of agreement will be the initial starting point for a negotiation between the applicant and the landowner.⁴²

It would also be of assistance to the OEB in reviewing both the LTC application and any forms of land use agreement to have a complete description of the applicant's land use requirements and intended uses.

An applicant may file for approval of its forms of land use agreements even if it is not certain they will be needed (e.g., in some cases it is not certain that a temporary work area easement will be required).

4.4.6 Indigenous Consultation

To the extent that the project triggers the Constitutional duty to consult, the applicant must demonstrate that it has followed the Indigenous consultation requirements from

⁴² A sample easement agreement may be found at [EB-2018-0108](#), Exhibit E, Tab 1, Schedule 3, Attachment 1. A sample working area agreement may be found at [EB-2018-0263](#), Exhibit A, Tab 10, Schedule 2, Page 12.

the Environmental Guidelines and that the duty to consult has been discharged sufficiently to allow the OEB to approve the application.

Section 35 of the *Constitution Act, 1982* recognizes and affirms the existing Aboriginal and treaty rights of Indigenous peoples in Canada. The Crown's duty to consult and, when required, to accommodate arises when proposed government actions or decisions may adversely affect asserted or established Aboriginal or treaty rights.

The Ministry of Energy will coordinate the Crown's duty to consult obligations that may be triggered by projects that require LTC.

The duty to consult process that an applicant is expected to follow in relation to a project that requires LTC is described in the Environmental Guidelines. The following is an overview of the process; however, applicants should refer to the Environmental Guidelines for further details.

1. The applicant shall contact the Ministry of Energy and provide a description of the project (this should occur early in the planning process and well before the filing of an application before the OEB).
2. The Ministry of Energy will determine whether the proposed project triggers a duty to consult. If so, the Ministry of Energy will identify any Indigenous communities whose rights are potentially affected by the proposed project and assess the extent of consultation required.
 - a. If no duty to consult is triggered, Ministry of Energy will provide a confirmation letter to the applicant.
 - b. If the duty to consult is triggered, the Ministry of Energy will expressly delegate the procedural aspects of consultation to the applicant by way of a delegation letter, memorandum of understanding or other express delegation instrument.
 - c. The consultation should begin at the onset of project planning so Indigenous communities have sufficient time to review materials and understand how the project may affect their rights, and the applicant and communities have sufficient time to identify option(s) for mitigating, avoiding or accommodating these effects.
3. The applicant should develop an Indigenous Consultation Report (ICR) that describes the consultation activities that were undertaken and their timing, include copies of communication and a summary of the rights-based concerns raised by Indigenous communities, and descriptions of what (if any) accommodations were proposed.

4. Upon review of the ICR and any other evidence on Indigenous consultation the Ministry of Energy will issue a letter to the applicant (Opinion Letter) expressing its views on the adequacy of the Indigenous consultation to date, and any expectations on the future consultation activities. The applicant is expected to file the Opinion Letter with the OEB as part of its application or as soon as it receives the letter.
5. The OEB takes the Ministry of Energy’s Opinion Letter into consideration when deciding if the duty to consult is adequately discharged in relation to the proposed project.

4.4.7 Conditions of Approval

Appendix D lists a set of standard conditions that the OEB typically imposes in LTC approvals. Applicants should review this list, and in their LTC applications, identify any additional or revised conditions, that they believe may be appropriate.

Standard condition of approval 7(b)(iv) requires the applicant to include a log of all complaints received including the date/time of the complaint, a description of the complaint, and any actions taken to address the complaint (including the rationale for taking such actions). Table 1, below, provides a sample format of a complaint log.

Table 1: Sample Complaint Log

Complaint Number	Date of Complaint	Summary of Complaint	Status (Open/Closed)	Date of Resolution	Summary of Resolution

4.5 Filing Requirements

An LTC application should include, at a minimum, the information required by the Environmental Guidelines and the content described in this section as applicable to the project. Any requirements that do not apply to applicants that are not and do not intend to be rate-regulated have been identified as such.

Exhibit A: Index and Overview

1. Provide the contact information (name, title, mailing address, telephone number and email address) of the applicant’s primary representative and any legal representative.
2. Provide an index (table of contents) of the various exhibits, tabs, schedules, attachments, and appendices.

3. Provide an overview of the proposed project and the approval(s) that are being requested. Refer to applicable legislation (e.g., OEB Act, *Municipal Franchises Act*).
4. Provide a description of any applicable franchise agreements and certificates.⁴³
5. Provide a map of the proposed facilities that is suitable for print publication. To be acceptable, the map must be in black and white, uncluttered, have large readable font; it must contain at least one landmark (city/town, major street, lake, railway line, etc.), a legend (that uses symbols, dashed lines and hashes rather than colours), a north arrow, and features mentioned in the application (pipelines, stations, start and end points, existing pipelines, etc.).

Exhibit B: Project Need

1. Provide an explanation of the purpose, need and timing of the proposed facilities. This could include:
 - a. The methodology and results of market research, customer attachment projections and volumetric forecasts
 - b. The methodology and results of a network analysis that demonstrates that the existing system is at or nearing capacity
 - c. Any risk assessments or other evidence that demonstrates the existence of an unacceptable system integrity issue
 - d. A description of how planning of the proposed project was informed by customer preferences and/or was driven by benefits to customers
 - e. To the extent that the applicant proposes to use a pipe size larger than required to meet the projected near or medium-term demand (approximately 10 years) (i.e., “upsizing”), an explanation as to why the larger pipe size is necessary
 - f. A description of how planning of the proposed project addresses the appropriate pacing and prioritization to control costs and manage risks
 - g. An explanation of why the project cannot be deferred
 - h. A schedule of the proposed project’s key milestones including, at a minimum, estimated dates for:

⁴³ Franchise agreements and certificates are not required for hydrocarbons other than natural gas.

- i. Environmental Assessments
 - ii. Permits and approvals
 - iii. Application(s) to the OEB
 - iv. Pre-construction, construction, and testing
 - v. In-service
- i. Commentary on the project's key milestones to the extent that any special considerations must be taken into consideration (e.g., scheduling work around species at risk, long lead-time permits)
2. Describe the context for the project in terms of the applicant's future plans, and where possible refer to applicable growth plans, asset management plans, or integrated resource plans; this may include identifying and describing any related projects (e.g., system reinforcements) or additional phases of the project, including the timing of those projects⁴⁴

Exhibit C: Project Alternatives

1. Provide a detailed overview of the proposed facilities in terms of location, start and end points, pipe sizes, lengths, diameters, pressures, etc.
2. Provide, in tabular form, the design specifications of the pipe and fittings that are intended to be used to construct the proposed facilities, including (as applicable):
 - a. Material, size, wall thickness, grade
 - b. Applicable standards: toughness, coating, cathodic protection, fittings, flanges, valves
 - c. Class location
 - d. Design pressure, hoop stress at design pressure
 - e. Maximum operating pressure, hoop stress at design pressure
 - f. Minimum depth of cover
 - g. Test medium, strength test pressure, hoop stress at strength test pressure
 - h. Leak test pressure

⁴⁴ This requirement applies only to rate regulated utilities.

3. Provide a description of the testing and inspection methodology and procedures for the proposed facilities
4. Identify and explain the rationale for any proposed departure from the requirements of the Canadian Standards Association standard CSA Z662 or any other applicable standard
5. Provide any relevant correspondence with the TSSA such as:
 - a. Confirmation that the TSSA has reviewed the design of the proposed facilities and found them to be compliant with the requirements of the CSA Z662⁴⁵
 - b. Confirmation that the applicant has filed a risk assessment per CSA Z662 Annex B and the status of that filing
6. Provide a summary of any work done to identify and evaluate pipeline and non-pipeline alternatives (i.e., solutions that do not involve constructing facilities such as Demand Side Management) and the rationale for choosing the preferred alternative in terms of its quantitative and qualitative benefits. Alternatives should be compared in terms of cost and cost savings, feasibility (Profitability Index, Net Present Value), timing, reliability, safety, land use requirements, permitting requirements, stakeholder impacts (e.g., municipalities, landowners), impacts on Indigenous communities and environmental impacts. Applicants should also refer to the OEB's decision on Integrated Resource Planning for additional guidance (see Appendix B).⁴⁶

Exhibit D: Project Cost and Economics⁴⁷

1. Provide an itemized table showing the estimated project capital costs including the following:
 - a. Pipeline material costs
 - b. Pipeline labour and construction costs
 - c. Pipeline consulting and professional service costs

⁴⁵ <https://www.tssa.org/en/about-tssa/resources/Documents/Application-for-review-of-Pipeline-Project-2020.pdf>

⁴⁶ As established in the OEB's Decision and Order in EB-2020-0091, Enbridge Gas's Integrated Resource Planning Proposal (July 22, 2021) including Appendix A to the Decision and Order, the IRP Framework

⁴⁷ This requirement applies only to rate regulated utilities and applicants that intend to become rate regulated and seek recovery of the costs of the project through rates.

- d. Pipeline contingency
 - e. Sub-total pipeline costs
 - f. Station material costs
 - g. Station labour and construction costs
 - h. Station consulting and professional service costs
 - i. Station contingency
 - j. Sub-total station costs
 - k. Pre-spend or developmental costs
 - l. Interest during construction
 - m. Direct overheads
 - n. Indirect overheads
 - o. Total project cost
2. Provide a summary table that compares the estimated capital cost of the project with the forecast and actual capital costs of at least three recent and comparable projects. Whenever possible, the three comparator projects should be projects that previously received LTC from the OEB and their case number should be provided.
 3. Leave to construct applications for system expansion projects must provide separate costs for the transmission and distribution segments of the project as well as any upstream reinforcement costs, even if the applicant is not seeking leave to construct the transmission segments.
 4. Refer to the estimation standard that was used (e.g., American Association of Cost Engineers).
 5. Provide information on how the level of contingency was established.
 6. Describe how project costs will be allocated between rate classes, as applicable. To the extent that cost impacts on ratepayers can be quantified, provide details of the cost impacts (e.g., the annual impact on a typical residential customer's bill in dollars per year).
 7. Describe the controls that will be used to help manage costs after the OEB issues its decision (e.g., fixed bid contract, Owner's Engineer).

8. Confirm that the application conforms to EBO 188 or EBO 134, as applicable. Describe how the proposed project meets the appropriate economic test (e.g., provide the assumptions and results of any stage 1, 2 and 3 assessment).
9. Provide a summary table that identifies the sources of revenues for the project (e.g., portion of the total capital cost that is supported through existing rates, funding provided through government programs, surcharges, incremental tax equivalent, capital contribution).
10. List and describe the key assumptions used in the economic feasibility assessment.
11. Provide a summary table of the discounted cash flow calculation inputs and results that shows the forecasted revenue requirement for each year of the revenue horizon.
12. Provide an assessment of the project's key financial and technical risks (e.g., project scope, costs, schedule, land use requirements, environment matters, and consultations) as well as the corresponding proposed approach to mitigation.

Exhibit E: Environmental Impacts⁴⁸

Applicants are required to prepare and file an Environmental Report with the OEB that is in accordance with the OEB's [Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario](#) (Environmental Guidelines). The Environmental Guidelines provides detailed direction on how to identify, manage and document environmental impacts and in preparing an Environmental Report. This Handbook provides a summary of the key provisions in the Environmental Guidelines. However, applicants should refer directly to the Environmental Guidelines themselves in preparing their application.

The Environmental Guidelines set out in detail the information that must be provided by an applicant in an Environmental Report with respect to:

1. Planning process regarding the determination of a route or site location for a new facility
2. Public consultation program, identifying and obtaining input from those affected by the project

⁴⁸ Refer to the Environmental Guidelines for additional guidance on how to identify, manage and document environmental impacts

3. Fulfilment of Indigenous consultation requirements
4. Route and site selection process
5. Environmental impact mitigation measures
6. Implementation and monitoring of the construction

Exhibit F: Route Map and Landowner Agreements

1. Provide a map (or series of maps) of suitable scale illustrating the preferred routing showing the general location of the proposed facilities that includes municipal names, lot and concession numbers, highways, railways, utility lines and navigable waters and other geographic features marked clearly that the pipeline will go through, over, under, upon or across. Indicate on this map the right-of-way dimensions and where the route crosses land owned privately or by the Crown.
2. Identify and describe the location, size, and purpose of any land purchase, permanent easement or temporary easement requirements. This includes a written description and a summary table listing the size, location, and ownership of each affected parcel of land, as well as the type of land use agreement required (e.g., fee simple purchase, permanent or temporary easement, temporary working area).
3. As required by section 97 of the OEB Act, provide a PDF copy of all forms of land agreement (whether permanent or temporary) that have or will be offered to each affected landowner.⁴⁹ Identify which, if any, of the forms of agreement have previously been approved by the OEB, and in which proceeding.
4. Provide a summary of all land negotiations to date including their status. Identify any contentious issues and the applicant's proposed approach to resolution.
5. Provide an affidavit of title search attesting to the work that was done to identify affected landowners and listing the affected landowners.
 - a. Provide a confidential listing of affected landowners, their contact information, and a description of their property. For guidance on filing personal information, consult the Rule 9A of the OEB's *Rules of Practice and Procedure* and Part 10 of the OEB's *Practice Direction on Confidential Filings*.

⁴⁹ Refer to Appendix C: Standard Elements of LTC Lease or Easement Forms of Agreement

- b. Provide a second non-confidential copy of this listing with any personal information redacted.

Exhibit G: Indigenous Consultation⁵⁰

1. Provide a copy of the applicant's Indigenous Consultation Report and the status of all efforts to the date of filing the application.
2. Provide the following documentation from the Ministry of Energy:⁵¹
 - a. A letter stating that the duty to consult is not triggered by the project, or
 - b. A delegation letter, memorandum of understanding or other express delegation instrument and, if available at the time of application, a letter from the Ministry of Energy that expresses its view on the adequacy of Indigenous consultation.

Exhibit H: Conditions of Approval

Provide comments on the applicability of the standard LTC conditions of approval. This includes providing any proposed revisions (including eliminating any conditions or proposing any new conditions) and the rationale for the proposed revisions.

4.6 Change Requests

One of the OEB's standard conditions of approval for LTCs requires the applicant to advise the OEB of any proposed change to OEB-approved construction or restoration procedures (Change Request).⁵²

Except in an emergency, the changes shall not be put into effect without the written approval of the OEB. In the event of an emergency, the OEB shall be informed in writing immediately after the fact.

A Change Request may be made in the form of a letter that addresses the nature and extent of any changes. The letter must clearly explain the nature and extent of the proposed change, the rationale for the proposed change, and its impact on the need for the project, project costs and economics, environmental impacts, land use requirements and landowner impacts, and Indigenous consultation. Where applicable, the location of the proposed change should be illustrated on a map or drawing. Whenever possible,

⁵⁰ Refer to Chapter 3 of the OEB's Environmental Guidelines. Additional general guidance on Indigenous consultation can be found at [government of Ontario's guidelines for consulting Indigenous communities](#)

⁵¹ If any of this documentation cannot be filed with the application, then it must be filed before the record of the proceeding is closed.

⁵² Condition No. 5, [Standard Conditions of Approval](#)

tables should be used to summarize the change (e.g., in cases where several parcels of land are impacted, a table should be used to summarize the property identification numbers, the landowner names, the size of the impact in acres or other unit, the status of negotiations, and the type of agreements such as a fee simple purchase an easement).

5 Natural Gas Storage and Related

5.1 Introduction

Underground natural gas storage pools are often associated with areas of oil and gas production and, in Ontario, are primarily located in the southwestern part of the province. These natural geological formations, which are depleted oil and gas production reservoirs, provide a means of storing large inventories of natural gas. The development of pools requires the drilling of storage wells that penetrate a natural gas-bearing geological structure. These pools are then usually filled with natural gas in the non-heating season and the natural gas is withdrawn during the heating season, which serves to significantly reduce natural gas transportation charges.

The development of these pools may cause environmental impacts resulting from the related surface activity such as well drilling, access road construction, pipeline⁵³ construction and compressor and other station development. Applications under sections 36.1 (1) through 40 of the OEB Act are subject to the OEB's Environmental Guidelines, which should be consulted in the preparation of applications related to natural gas storage.

Both the Natural Resources branch of the Ministry of Northern Development, Mines, Natural Resources and Forestry (Natural Resources) and the OEB have roles in the regulation of natural gas storage activities. Natural Resources is responsible for the technical and safety aspects of storage pool development and operation in accordance with requirements of CSA Z341 *Storage of Hydrocarbons in Underground Formations* (CSA Z341) and the [Gas and Salt Resources of Ontario, Provincial Operating Standards](#), Version 2.0 (the Provincial Standards). The OEB has jurisdiction over the over rates charged for gas storage and the designation of gas storage areas.

Applications for licences and permits relating to a designated storage area (DSA) (including, among other activities, the drilling of a well) are first made to Natural Resources. Natural Resources shall refer the application for the granting of a licence relating to a well in a DSA to the OEB, and shall refer applications for permits for certain

⁵³ Typically, infrastructure expansion in these pools, in addition to wells, includes gathering pipelines (i.e., smaller diameter pipelines connected to the wells) and, if not already in place, larger diameter pipelines that connect the gathering pipelines to the integrated pipeline system.

other well-related activities to the OEB if the point of injection proposed in those permit applications is within 1.6 km of a DSA. The OEB's findings are documented in a report that is sent to the Minister of Natural Resources, and the OEB's report will typically contain a recommendation with respect to the issuance of the licence, together with recommended licence conditions. The Minister shall grant or refuse to grant the licence in accordance with the OEB's report. Natural Resources generally participates in the OEB's process either by filing a letter of comment or as an intervenor with the right to submit interrogatories and make submissions. The OEB will consider Natural Resources's comments with respect to the application generally, and to any potential licence conditions included in its report.

Applications to designate a storage area, change the operating pressure of a DSA, or for leave to construct pipelines associated with storage operations are made directly to the OEB. Natural Resources generally participates in the OEB's process either by filing a letter of comment or as an intervenor. As with reports on licence applications, the OEB will consider Natural Resources's comments with respect to any potential conditions of approval to be contained within its decision and order.

5.2 Legislation

The OEB has authority under the OEB Act to issue orders designating natural gas storage areas; authorizing the injection and withdrawal of natural gas into and from a DSA; to change the operating pressure of a DSA; and to determine compensation payable to landowners and owners of gas or oil rights or storage rights in the DSA. The following sections of the OEB Act apply to natural gas storage applications.

Section 36.1 (1) gives the OEB the authority to designate an area as a natural gas storage area, or to amend or revoke a designation.

Section 37 provides that no person is permitted to inject natural gas for storage into a geological formation unless the formation is within a DSA and unless, in the case of gas storage areas designated after January 31, 1962, authorization to do so has been obtained under section 38 or its predecessor.

Section 38 (1) gives the OEB the authority to authorize a person to inject natural gas into, store natural gas in and remove natural gas from a designated storage area, and to enter into and upon the land in the area and use the land for that purpose.

Section 38 (2) requires the person receiving OEB authorization under section 38 (1) to make to the owners of any natural gas or oil rights or of any right to store natural gas in the area just and equitable compensation. In addition, it requires this person to make just and equitable compensation to the owner of any land in the area for any damage

necessarily resulting from the exercise of the authority given by the order. In the absence of an agreement, the OEB shall determine the amount of the compensation.

Section 39 (1) provides that, upon the application of a gas transmitter or gas distributor, the OEB by order may direct a storage company having storage capacity and facilities that are not in full use to provide all or part of the storage capacity and facilities for the applicant upon such conditions as may be determined by the OEB.

Section 39 (2) requires that no storage company shall enter into an agreement or renew an agreement with any person for the storage of gas unless the OEB, with or without a hearing has approved,

- a) The parties to the agreement or renewal;
- b) The period for which the agreement or renewal is to be in operation; and
- c) The storage that is the subject of the agreement or renewal. 1998, c. 15, Sched. B, s. 39 (2).

Section 40 (1) requires that the Minister of Natural Resources refer to the OEB every application for granting a licence relating to a well in a designated gas storage area and that the OEB must report to the Minister of Natural Resources on it.

Section 40 (2) authorizes the OEB to hold a hearing before reporting to the Minister of Natural Resources, if the applicant does not have the authority to store natural gas in the area, or in the OEB's opinion, the special circumstances of the case require a hearing.

Section 40 (3) requires the OEB to send each of the parties a copy of its report to the Minister of Natural Resources within 10 days after submitting it to the Minister.

Section 40 (4) requires the Minister of Natural Resources to grant or refuse to grant the licence in accordance with the OEB report.

5.3 Summary of Types of Natural Gas Storage and Related Applications

- 1) **Storage Area Designation Application** – an application under section 36.1 (1) of the OEB Act seeking the designation of a storage area. A DSA may consist of one or more storage pools or reservoirs.⁵⁴
- 2) **Well Drilling Licence Application Referral** – a referral under section 40 (1) of the OEB Act from the Minister of Natural Resources to the OEB of an application for a

⁵⁴ For example, refer to [Jacob Pool Storage Development EB-2011-0013 / EB-2011-0014 / EB-2011-0015](#)

licence for one or more wells that is/are proposed to be drilled in a DSA. The wells may be for injection/withdrawal or monitoring purposes. In these cases, the OEB does not issue a decision on the application, but instead issues a report to the Natural Resources, typically (where the OEB recommends issuance of the licence) including recommended licence conditions.

- 3) **Application to Increase the Maximum Operating Pressure of a Storage Pool** – an application under section 38 (1) of the OEB Act filed alone or as part of a storage enhancement application (see below) seeking approval to increase the maximum operating pressure (MOP) of a natural gas storage pool above the most recent OEB approved MOP in order to increase the storage capacity of the pool.
- 4) **Storage Related LTC Application** – an application under section 90 of the OEB Act seeking leave to construct a pipeline that meets statutory LTC criteria and that is part of natural gas storage operations.
- 5) **Storage Enhancement Application** – an application seeking approvals that will enable a person to increase the capacity and/or deliverability of a DSA. A storage enhancement project typically includes two or more of the following components:
 - a) Well drilling licence application referral
 - b) Maximum Operating Pressure increase application
 - c) Storage related LTC application

5.4 Filing Requirements

For storage related applications, at a minimum, the following information must be filed where applicable to a given project.⁵⁵

- 1) Need and Timing
 - a) Provide evidence that demonstrates the need for the project
 - b) Explain whether the project will result in a change to the facility's storage capacity and/or deliverability
 - c) Identify and explain any new regulated storage services and/or market-based services that are expected to arise directly as the result of the project
 - d) Provide evidence that demonstrates that the project cannot be deferred

⁵⁵ Any related LTC application must adhere to the filing requirements set out in section 4.

2) Technical

- a) Evidence that the applicant is a financially viable and technically competent storage developer and operator who is legally permitted to undertake the proposed project in accordance with the Provincial Standards
- b) Evidence demonstrating the suitability of the storage pool to accommodate the proposed project. The evidence should refer to applicable laws (including the Oil, Salt, and Gas Resources Act), regulations, codes and standards (specifically CSA Z341). Such evidence may include (as applicable):
 - i) An Engineering Assessment
 - ii) An Assessment of Neighbouring Activities
 - iii) A “What If” Analysis of Hazards and Operability Issues
 - iv) A map showing proposed well locations⁵⁶
 - v) A copy of the proposed drilling program
- c) A risk assessment that addresses such items as project scope, costs, schedule, land use requirements, environment matters, and consultations and associated mitigations.

3) Proposed Facilities and Alternatives Considered

- a) A description of the proposed facilities
- b) A map showing the location of the proposed facilities⁵⁶
- c) A description of the alternatives and an explanation of how the preferred alternative was selected from among the alternatives
- d) An explanation or whether the proposed project constitutes a like-for-like replacement of facilities
- e) An explanation of whether the work could create a service disruption to ratepayers. If so, an explanation of the applicant’s mitigation plans

⁵⁶ To be acceptable, the map must be in black and white, uncluttered, have large readable font; it must contain at least one landmark (city/town, major street, lake, railway line, etc.), a legend (that uses symbols, dashed lines and hashes rather than colours), a north arrow, and features mentioned in the application (wells, pipelines, etc.).

- f) An explanation of how the proposed project fits within the applicant's Asset Management Plan, Gas Supply Plan, and any Integrated Resource Plan⁵⁷

4) Costs & Economics⁵⁸

- a) A breakdown of the capital and operating costs of the proposed project
- b) An explanation of the treatment of the project costs for regulatory purposes (e.g., are they being borne by shareholders or ratepayers? Are they being expensed or capitalized?)
- c) An explanation and quantification of any rate impacts

5) Land Matters

- a) A description of the land use requirements
- b) A description of the nature and extent of land use negotiations to date
- c) A description of any outstanding landowner matters
 - i) The nature of any landowner concerns and how they were addressed
 - ii) Whether compensation has been made in respect of a) the gas or oil rights or the right to store gas and b) any property damage necessarily resulting from the project
 - iii) The results of the Hydrology Report
 - iv) A description of the Water Well Monitoring Program
- d) Copies of the forms of land use agreements that will or might be used
 - i) The OEB case number or the proceeding in which the forms of land use agreements were last approved
 - ii) A description of any changes to the forms of land use agreements since they were last approved

6) Environmental Matters

⁵⁷ This requirement applies only to rate regulated utilities

⁵⁸ The OEB's Decision and Order in EB-2005-0551, Natural Gas Electricity Interface Review (NGIER), provides that the applicant does not need to disclose costs and economics of unregulated storage operations.

- a) A copy of the Environmental Report or environmental screening, and a confirmation that the Environmental Report or environmental screening is compliant with the OEB's Environmental Guidelines

7) Proposed Conditions of Approval

- a) The applicant should propose any conditions of approval that it believes may be necessary

6 Expropriation

6.1 Introduction

A person that has received leave to construct from the OEB, may apply for authorization to expropriate land for the work under section 99 of the OEB Act. The OEB may make an order authorizing the expropriation if it determines that the expropriation is in the public interest. Applicants are expected to make best efforts to negotiate an agreement with landowners before resorting to an expropriation application.

The main issue in an expropriation proceeding is not whether the project itself is in the public interest (as this will already have been determined in the leave to construct approval), but rather whether the specific expropriations requested are in the public interest.

In assessing whether proposed expropriations are in the public interest, the OEB has generally considered the following issues:⁵⁹

1. Are the specific interests in the lands requested for expropriation appropriate and have reasonable steps been taken to minimize the impact of the proposed expropriation on the subject properties?
2. What conditions, if any, should be attached to the OEB's order?

6.2 Legislation

The OEB's power to grant authority to expropriate land is found in section 99 of the OEB Act. Under this section, any person who has been granted leave by the OEB to construct a hydrocarbon pipeline, may apply for authority to expropriate land for the project.

⁵⁹ The OEB considered similar issues, in proceeding EB-2019-0127 related to NextBridge Infrastructure LP's application for authority to expropriate certain interests in land required to construct the East West Tie Project.

Section 99 (3) of the OEB Act requires that the applicant file with the OEB a plan and description of the land required, together with the names of all persons having an apparent interest in the land.

Subsection 99 (5) of the OEB Act states that, if the OEB is of the opinion that the expropriation of the land is in the public interest, it may make an order authorizing the applicant to expropriate the land.

If the OEB grants authority to expropriate land, absent agreement between the parties the process set out in the *Expropriations Act* must be followed to determine the amount of compensation to be paid.

6.3 Filing Requirements

Expropriation applications must contain:

1. A draft Expropriation Plan (i.e., technical drawing) that is suitable for registration at a Land Registry Office, that shows the location of natural gas infrastructure on the land, and the boundaries of the land that is proposed to be expropriated
2. A description of the land rights subject to the expropriation application (e.g., fee simple purchase, permanent easements, term of temporary land use rights) including such things as the general location (e.g., town, municipality), size (e.g., m², acres), and unique identifier (e.g., Property Identification Number, lot/concession)
3. The names of all persons having an apparent interest in the land

The applicant must demonstrate due diligence in negotiating settlements with impacted landowners, relevant lienholders, and other encumbrancers, including a list of issues and explanation(s) of how each issue was resolved or proposed to be resolved.

6.4 Post-hearing Filings

A person that has received authorization from the OEB for expropriation is required by the OEB to:

1. Provide to the OEB a Mylar original of the final Expropriation Plan for each property subject to the OEB's expropriation decision.⁶⁰ Once the final Expropriation Plan is approved and endorsed by the OEB, the OEB will return it to the person for certification so that the certified Expropriation Plan can be registered with the appropriate Land Registry Office. The purpose of the OEB's

⁶⁰ The exact wording of the certification text that the applicant places on the Expropriation Plan before it provides it to the OEB for certification should be obtained from the Land Registry Office.

endorsement is to confirm that the legal description of the affected property shown in the Expropriation Plan is exactly the same as the legal description of that property in the OEB's expropriation decision. The person must file the certified Expropriation Plan with the Land Registry Office within three months of the date of the OEB's decision.

2. Inform the OEB of any modifications in the legal description of interests in lands authorized for expropriation by the OEB decision. If there are changes, the OEB's decision will have to be varied to reflect the changes in legal description.
3. Inform the OEB immediately if it has reached a negotiated settlement with respect to any of the properties authorized for expropriation by the OEB decision. In that event, the OEB decision will have to be varied to remove the authorization for properties where expropriation is no longer needed.

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Appendix A: Standard LTC Issues List

The OEB's legislative authority with respect to the applications seeking approval for the construction of hydrocarbon pipelines (usually natural gas pipelines) is set out in Sections 90, 91 and 96(1) of the *Ontario Energy Board Act, 1998* (OEB Act).

Section 90(1) states that:

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 more than the amount prescribed by the regulations;
- (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.

Section 91 states that:

91 Any person may, before constructing a hydrocarbon line to which section 90 does not apply or a station, apply to the Board for an order granting leave to construct the hydrocarbon line or station.

Section 96(1) states that:

96(1) If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.

The OEB also has authority over the form of agreements that have been or will be offered to landowners affected by the pipeline project under section 97 of the OEB Act.

When determining whether a project is in the public interest, the OEB typically examines the need for the project, project alternatives, project cost and economics, environmental impacts, land matters, and Indigenous consultation. This standard issues list below is intended to capture all of the issues that are within the scope of a typical hydrocarbon pipeline leave to construct application under section 90 or 91 of the OEB Act.

Section 90 and 91 Leave to Construct Issues List

1.0: Need for the Project

- 1.1: Has the applicant demonstrated that the project is needed? What factors are driving the need? (e.g., new customer demand, increased system capacity requirement, reliability of service, need for pipeline relocation, operational risks, integrity issues) Has sufficient evidence demonstrating need been provided (e.g., customer or volumetric forecast, system capacity analysis, engineering reports)?
- 1.2: Has the applicant demonstrated how the project fits within any relevant growth plans for the area and/or the applicant's asset management plans? – e.g., what are the dependencies between the proposed project and previously approved LTC projects or in the case of a large project, between the proposed project and future phases of the project?

2.0: Project Alternatives

- 2.1: Has the applicant demonstrated that the identified need is best addressed by the proposed project, having adequately considered all viable alternatives (e.g., other pipeline solutions or non-pipeline solutions including integrated resource planning alternatives)?
- 2.2: Has the applicant compared the alternatives using appropriate metrics including cost and cost savings, feasibility (Profitability Index, Net Present Value), timing, reliability, safety, land use requirements, permitting requirements, stakeholder impacts (e.g., municipalities, landowners), impacts on Indigenous communities and environmental impacts?

3.0: Project Cost and Economics

- 3.1: Has the applicant provided sufficient information to demonstrate that the estimates of the project costs are reasonable? How do the costs of the project compare with recent similar projects, where applicable?
- 3.2: Has the applicant adequately identified and described any risks associated with the proposed project? Is the proposed contingency budget appropriate and consistent with these identified risks?
- 3.3: Has the applicant demonstrated that the project's economics meet the OEB's economic tests using the methodology outlined in Energy Board Order (EBO) 188 and EBO 134, as applicable? Where a contribution in aid of construction is required, is the amount of the contribution reasonable and consistent with OEB policies?

3.4: If an OEB-approved surcharge like the System Expansion Surcharge or Temporary Connection Charge⁶¹ (i.e., charges designed to raise additional revenue for expansion projects that are not otherwise economically viable) is requested, has the applicant demonstrated that the project is eligible for a surcharge and that the requested duration of the surcharge is appropriate?

3.5: If an OEB-approved allocation factor like the Hourly Allocation Factor (HAF)⁶² (i.e., a method of allocating the cost of project capacity to customers for feasibility purposes) is requested, has the applicant demonstrated that the project is eligible for such an allocation factor and that the proposed amount of the allocation factor is reasonable and consistent with OEB policies?

4.0: Environmental Impacts

4.1: Has the applicant filed an Environmental Report which meets the requirements of the OEB's Environmental Guidelines⁶³ and appropriately identified the environmental impacts associated with construction of the project and adequately described how it intends to mitigate and manage these impacts?

5.0: Route Map and Form of Landowner Agreements

5.1: Has the applicant demonstrated that any proposed forms of landowner agreements under section 97 of the OEB Act are appropriate?

5.2: Does the route map provided pursuant to section 94 of the OEB Act show the general location of the proposed work and the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed work is to pass?

6.0: Indigenous Consultation

6.1: To the extent that the project triggers the Constitutional duty to consult, has the proponent followed the Indigenous consultation requirements from the Environmental Guidelines? Has the duty to consult been discharged sufficiently to allow the OEB to approve the application?

7.0: Conditions of Approval

7.1: The OEB's standard conditions of approval are attached as Schedule 1. If the OEB approves the proposed project, what additional or revised conditions, if any, are appropriate?

⁶¹ EB-2020-0094 Decision and Order on Enbridge Gas Inc.'s application for a System Expansion Surcharge or Temporary Connection Charge and an Hourly Allocation Factor

⁶² Ibid.

⁶³ Ontario Energy Board Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 7th Edition, 2016

Appendix B: IRP Framework

<<Note to Draft: Insert the 24 page [IRP Framework](#) PDF here>>

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Appendix C: Standard Elements of Easement Agreements

This form of agreement will be the initial starting point for a negotiation between a landowner and a LTC applicant. However, it is open to the landowner and applicant to develop the substantive content of these clauses and any other mutually-agreed clauses to in the agreement. Adhering to this form of agreement does not limit the OEB's discretion to either approve or not approve a form of agreement submitted in a proceeding.

1. Legal description of properties

A section in the form of agreement for identifying the full legal description of each of the affected properties.

2. Description of the lease or easement Area

The portion of property to which the applicant is granted permission to use or access must be depicted visually. Such a depiction need not be elaborate, but a clear "drawing" of the relevant easement area will help provide clarity and avoid potential disputes. A professional survey is helpful.

3. Covenant not to disturb the use of the easement - Right of Access

Although it may have a clearly defined right to use the owner's property, the party granted easement rights must also be sure that the owner's use of the property will not create practical problems. The easement agreement should include language that protects the rights of the party granted the easement to undisturbed use of the easement.

4. Determination of maintenance obligations

Even after rights and non-disturbance issues are clarified, the parties to an easement agreement face the issue of who will take care of that portion of the property, pay for any needed repairs or address related problems that occur. The parties should determine who will maintain the easement area.

5. Decommissioning

A decommission clause should set out that the applicant will be responsible to cover the cost of decommissioning the facilities and restoring any damage done to the easement lands. This clause should also have specific procedures for the decommissioning process.

6. Independent Legal Advice (ILA)

Provision must be made that both parties have had the option to obtain independent legal advice. ILA is commonly paid for by the applicant.

7. Liability: Indemnity and exculpation

The agreement should reflect the parties' consideration of their potential liabilities with respect to their ownership or use of the property.

8. Insurance

An easement agreement should clearly state any obligations of the parties to maintain any forms of insurance. Considerations would include property insurance, but may also include other coverage as well, as dictated by the circumstances.

9. Default provisions and termination

Some consideration must be made for events or behavior on the part of either party that will terminate the easement.

10. Dispute resolution

Provision setting out the dispute resolution procedure to be used in case of disagreement.

Appendix D: Standard LTC Conditions of Approval

1. [The Applicant] shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in [insert OEB File No.] and these Conditions of Approval.
2. (a) Authorization for leave to construct shall terminate 12 months after the decision is issued, unless construction has commenced prior to that date.⁶⁴
(b) [The Applicant] shall give the OEB notice in writing:
 - i. of the commencement of construction, at least 10 days prior to the date construction commences
 - ii. of the planned in-service date, at least 10 days prior to the date the facilities go into service
 - iii. of the date on which construction was completed, no later than 10 days following the completion of construction
 - iv. of the in-service date, no later than 10 days after the facilities go into service
3. [The Applicant] shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project.
4. [The Applicant] shall implement all the recommendations of the Environmental Report filed in the proceeding, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.
5. [The Applicant] shall advise the OEB of any proposed change to OEB-approved construction or restoration procedures.⁶⁵ Except in an emergency, [the Applicant] shall not make any such change without prior notice to and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.
6. Concurrent with the final monitoring report referred to in Condition 7(b), [the Applicant] shall file a Post Construction Financial Report, which shall provide a variance analysis of project cost, schedule and scope compared to the estimates filed in this proceeding, including the extent to which the project contingency was utilized. [The Applicant] shall also file a copy of the Post Construction Financial

⁶⁴ The 12-month period is intended to allow time for applicants to obtain any outstanding permits and approvals and to complete any pre-construction work.

⁶⁵ Refer to sections 4.6 LTC Change Requests

Report in the proceeding where the actual capital costs of the project are proposed to be included in rate base or any proceeding where [the Applicant] proposes to start collecting revenues associated with the Project, whichever is earlier.

7. Both during and after construction, [the Applicant] shall monitor the impacts of construction, and shall file with the OEB one electronic (searchable PDF) version of each of the following reports:
 - a. A post construction report, within three months of the in-service date, which shall:
 - i. provide a certification, by a senior executive of the company, of [the Applicant's] adherence to Condition 1
 - ii. describe any impacts and outstanding concerns identified during construction
 - iii. describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction
 - iv. include a log of all complaints received by [the Applicant], including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
 - v. provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licenses, and certificates required to construct, operate and maintain the proposed project
 - b. A final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
 - i. provide a certification, by a senior executive of the company, of [the Applicant's] adherence to Condition 4
 - ii. describe the condition of any rehabilitated land
 - iii. describe the effectiveness of any actions taken to prevent or mitigate any identified impacts of construction
 - iv. include the results of analyses and monitoring programs and any recommendations arising therefrom
 - v. include a log of all complaints received by [the Applicant], including the date/time the complaint was received; a description of the complaint; any

actions taken to address the complaint; and the rationale for taking such actions

8. [The Applicant] shall designate one of its employees as project manager who will be responsible for the fulfillment of these conditions, and shall provide the employee's name and contact information to the OEB and to all the appropriate landowners, and shall clearly post the project manager's contact information in a prominent place at the construction site.

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